

STATE OF ALASKA

received 4/14/10

Department of Labor and Workforce Development

OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

P.O. BOX 111149
JUNEAU, ALASKA 99811-1149

PHONE: (907) 465-2700
FAX: (907) 465-2784

April 13, 2010

Ms. Gay Gilbert, Administrator
Office of Workforce Security
200 Constitution Avenue NW, Room S-4231
Washington, DC 20210

Dear Ms. Gilbert,

This is Alaska's request for the two-thirds modernization incentive payment for 1. Providing dependents allowance of at least \$15 per dependent, per week; and, 2. Not disqualifying individuals from receiving Unemployment Compensation (UC) for voluntarily leaving work for certain compelling family reasons.

In accordance with UIPL 14-09 and UIPL 14-09 Change 1, we submit the following in support of this application:

STATE: ALASKA

STATE LAW: AS 23.20.350(f), AS 23.20.379(a) (1), AS 23.20.385(b),
8 AAC 85.075(d) and 8 AAC 85.095

EFFECTIVE DATE: April 24, 2010: Voluntary leaving for certain
compelling family reasons
1949: Dependents allowance has been in effect in Alaska
for 60 years.

CERTIFICATION OF PERMANENCY: We certify that the above-cited state law is permanent
and is not subject to discontinuation under any
circumstances other than repeal by the state legislature.

USE OF FUNDS: Alaska intends to use the incentive payment to pay UC
and Employment Service administrative costs in
accordance with legislative appropriation and consistent
with the following: The Social Security Act, Federal
Unemployment Tax Act, Public Law 111-5, UIPL 14-09,
UIPL 39-97, TEGL 18-01, and
TEGL 18-01 Attachment 1

CERTIFICATION OF GOOD FAITH:

Alaska submits this application in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions on which the application is based.

CERTIFICATION RE VICTIMS OF DOMESTIC VIOLENCE OR SEXUAL ASSAULT:

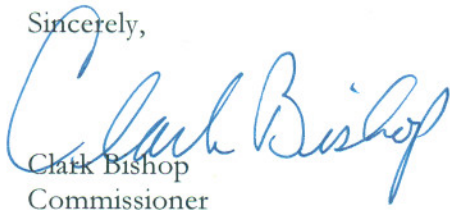
We certify that the adopted regulation is broadly defined and did not result in any narrowing of access to UC for victims of domestic violence or sexual assault.

ATTACHMENTS:

1. Memorandum from the Office of the Lieutenant Governor of Alaska with enclosures dated March 25, 2010 RE: Filed Permanent Regulations: Department of Labor and Workforce Development (8 AAC 85.095, Voluntary Leaving is included)
2. AS 23.20.350(f) (Dependents allowance)
3. AS 23.20.379(a) (1)
4. AS 23.20.385(b)
5. 8 AAC 85.075(d) (Dependents allowance)
6. 8 AAC 85.095 (Adopted September 2009 and amended March, 2010 – See #1 above)
7. Benefit Policy Manual, Voluntary Leave Sections 155 and 160, Misconduct Section 15

If you have any questions, please contact Thomas Nelson, Director of the Employment Security Division at (907) 465-5933.

Sincerely,


Clark Bishop
Commissioner

Craig E. Campbell
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520 465.5400 Fax
WWW.LTGOV.ALASKA.GOV




530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
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OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA

MEMORANDUM

TO: Sharon Busch, AAC Contact
Department of Labor & Workforce Development

FROM: Scott Clark
Special Assistant
907.465.4081 

DATE: March 25, 2010

RE: Filed Permanent Regulations: Department of Labor & Workforce Development
Unemployment Insurance; Voluntary Leaving Available Employment; Disability and
Illness: 8 AAC 85.095

Attorney General File: JU2009200871
Regulation Filed: 3/25/2010
Effective Date: 4/24/2010
Print: 194, July 2010

cc with enclosures: Linda Miller, Department of Law
Jim Pound, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS OF
THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT


The attached 2 pages of regulations, dealing with unemployment insurance benefits, good cause for voluntarily leaving available employment and definition of illness and disability, are adopted and certified to be a correct copy of the regulation changes that the Department of Labor and Workforce Development adopts under the authority of AS 23.20.045, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

Although no public comments were received, the Department of Labor and Workforce Development paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE: 3-24-2010
Juneau, Alaska


Clark Bishop, Commissioner
Department of Labor and Workforce Development

Scott Clark for FILING CERTIFICATION
I, Craig E. Campbell, Lieutenant Governor for the State of Alaska, certify that on
March 25, 2010, at 3:20 p.m., I filed the attached regulations according to the
provisions of AS 44.62.040 - 44.62.120.


Craig E. Campbell, Lieutenant Governor

Effective: April 24, 2010

Register: 194, July 2010

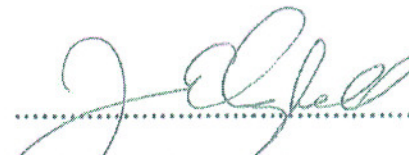
FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, CRAIG E. CAMPBELL, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employee to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

SCOTT CLARK, Special Assistant

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, at Juneau, on February 23, 2010.




.....
CRAIG E. CAMPBELL
LIEUTENANT GOVERNOR

8 AAC 85.095(c)(1) is amended to read:

(1) leaving work due to a disability [HEALTH OR PHYSICAL CONDITION] or illness of the claimant that makes it impossible for the claimant to perform the duties required by the work, if the claimant has no other reasonable alternative but to leave work;

8 AAC 85.095(c)(2) is amended to read:

(2) leaving work to care for an immediate family member who [IS ILL OR] has a disability or illness;

8 AAC 85.095(c)(7) is repealed and readopted to read:

(7) leaving work to accept a bona fide offer of work that offers better wages, benefits, hours, or other working conditions; if the new work does not materialize, the reason for the work not materializing must not be due to the fault of the worker;

8 AAC 85.095(c) is amended by adding a new paragraph to read:

(8) other factors listed in AS 23.20.385(b).

8 AAC 85.095(g)(3) is repealed and readopted to read:

(3) "disability or illness" means a disability or illness that necessitates care for the disabled or ill person for a period of time longer than the employer is willing to grant leave, paid or otherwise;

Register 194, July 2010 LABOR AND WORKFORCE DEV.

(Eff. 11/7/80, Register 76; am 4/11/90, Register 114; am 4/28/95, Register 134; am 10/12/97;

Register 144; am 11/1/2009, Register 192; am 4/24/2010, Register 194)

Authority: AS 23.20.045 AS 23.20.379 AS 23.20.385

Craig E. Campbell
Lieutenant Governor
State Capitol
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OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA

MEMORANDUM

TO: Sharon Busch, AAC Contact
Department of Labor and Workforce Development

FROM: Benjamin Shier *Ben Shier*
Special Assistant
907.465.4081

DATE: September 4, 2009

RE: Filed Permanent Regulations: Department of Labor and Workforce Development

Unemployment Insurance Benefits: Good Cause for Voluntarily Leaving Available
Employment: 8 AAC 85.095

Attorney General File: JU2008200071
Regulation Filed: 9/4/2009
Effective Date: 11/1/2009
Print: 192, January 2010

cc with enclosures: Linda Miller, Department of Law
Jim Pound, Administrative Regulation Review Committee
Judy Herndon, LexisNexis
Clifford Napier, DOL

ORDER ADOPTING CHANGES TO REGULATIONS OF
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT


The attached 2 pages of regulations, dealing with Unemployment Insurance Benefits: Good Cause for Voluntarily Leaving Available Employment, are hereby adopted and certified to be a correct copy of the regulation changes that the Department of Labor and Workforce Development adopts under the authority of AS 23.20.045; AS 23.20.379; AS 23.20.385 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Labor and Workforce Development paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on November 1, 2009, as provided in AS 44.62.180.

DATE: 8-21-09
Juneau Alaska


Clark Bishop, Commissioner
Department of Labor
and Workforce Development

Benjamin P. Shier for FILING CERTIFICATION

I, Craig E. Campbell, Lieutenant Governor for the State of Alaska, certify that on September 4, 2009, at 11:00am., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.


Lieutenant Governor Craig E. Campbell

Effective: November 1, 2009

Register: 192, January 2010

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, CRAIG E. CAMPBELL, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employee to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

BENJAMIN SHIER, Special Assistant

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, at Anchorage, on August 10, 2009.



A handwritten signature in cursive script, appearing to read "Craig E. Campbell", written over a horizontal dotted line.

**CRAIG E. CAMPBELL
LIEUTENANT GOVERNOR**

8 AAC 85.095(c) is repealed and readopted to read:

(c) To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:

(1) leaving work due to a health or physical condition or illness of the claimant that makes it impossible for the claimant to perform the duties required by the work, if the claimant has no other reasonable alternative but to leave work;

(2) leaving work to care for an immediate family member who is ill or has a disability;

(3) leaving work due to safety or other working conditions or an employment agreement related directly to the work, if the claimant has no other reasonable alternative but to leave work;

(4) leaving work to accompany or join a spouse at a change of location, if commuting from the new location to the claimant's work is impractical; for purposes of this paragraph, the change of location must be as a result of the spouse's

(A) discharge from military service; or

(B) employment;

(5) leaving unskilled work to attend a vocational training or retraining course approved by the director under AS 23.20.382, only if the claimant enters the course immediately upon separating from work;

(6) leaving work in order to protect the claimant or the claimant's immediate family members from harassment or violence;

(7) other factors listed in AS 23.20.385(b).

Register 192, Jan 2010 LABOR AND WORKFORCE DEV.

8 AAC 85.095(g) is amended by adding new paragraphs to read:

(3) "disability" means a condition attributable to one or more mental or physical impairments that are severe, chronic, and likely to continue indefinitely;

(4) "immediate family member" means a person who is related to the claimant by blood, marriage, or adoption as a parent, child, spouse, brother, sister, grandparent, or grandchild.

(Eff. 11/7/80, Register 76; am 4/11/90, Register 114; am 4/28/95, Register 134; am 10/12/97, Register 144; am 11 / 1 / 2009, Register 192)

Authority: AS 23.20.045 AS 23.20.379 AS 23.20.385



Sec. 23.20.350. Amount of benefits.

(a) An individual who is paid at least \$2,500 in wages during the individual's base period for employment covered by this chapter is eligible to receive benefits under this chapter if those wages were paid in at least two of the calendar quarters of the individual's base period.

(b) *[Repealed, Sec. 33 ch 115 SLA 1982].*

(c) For the purpose of computing the benefits payable under this chapter, the base period wages of an insured worker shall be determined as follows:

(1) if the insured worker is paid 90 percent or more of the worker's wages in the calendar quarter of the worker's base period in which the worker was paid the greatest amount of wages, the base period wages are the wages paid in the quarters of the base period other than the one in which the greatest amount of wages were paid, multiplied by 10; and

(2) if the insured worker is paid less than 90 percent of the worker's wages in the calendar quarter of the worker's base period in which the worker was paid the greatest amount of wages, the base period wages are the wages paid to the worker during the base period.

(d) An individual who is eligible under (a) of this section is entitled to receive the weekly benefit amount set out in column (B) of the table in this subsection that is opposite the amount set out in column (A) of the individual's base period wages determined under (c) of this section:

(A) (B)

Base Period Wages Weekly Benefit Amount

At least But less than

0 2,500 \$ 0

2,500 2,750 56

2,750 3,000 58

3,000 3,250 60

3,250 3,500 62

3,500 3,750 64

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39,750	40,000	354
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40,250	40,500	358
40,500	40,750	360
40,750	41,000	362
41,000	41,250	364
41,250	41,500	366
41,500	41,750	368
41,750	42,000	370
42,000		370.

(e) An individual who is eligible under (d) of this section is entitled to receive a weekly benefit under this chapter for the number of weeks set out in column (B) of the table in this subsection opposite the applicable earnings ratio of the individual set out in column (A):

(A) (B)

Earnings Ratio Number of Weeks

less than 1.50	16
1.50-1.99	18
2.00-2.49	20
2.50-2.99	22
3.00-3.49	24
3.50 or more	26

(f) An individual who establishes a benefit year is eligible for an allowance for dependents in addition to the individual's weekly benefit amount. The department may require an individual claiming or receiving an allowance for dependents to produce income tax returns, birth certificates,

(f) An individual who establishes a benefit year is eligible for an allowance for dependents in addition to the individual's weekly benefit amount. The department may require an individual claiming or receiving an allowance for dependents to produce income tax returns, birth certificates, notices of adoption or custody, social security account number of spouse, verification of support documents, or other information necessary to verify that the allowance is payable to the individual. The allowance for dependents

(1) is \$24 per week for each dependent, except that the total allowance for dependents paid to an individual may not exceed \$72 for each week of unemployment;

(2) is payable beginning with the week during the benefit year in which the individual claims an allowance for the dependent and is payable for the remainder of the individual's eligibility for regular, extended, or supplemental payments during the benefit year;

(3) may not be claimed for a new dependent after the end of the benefit year or after the exhaustion of regular benefits in the benefit year;

(4) *[Repealed, Sec. 30 ch 100 SLA 1989].*

(5) *[Repealed, Sec. 30 ch 100 SLA 1989].*

(g) In this section,

(1) "dependent" means an individual's

(A) unmarried child, stepchild, legally adopted child, or legal ward under 18 years of age who is

(i) lawfully in the individual's physical custody at the time the individual claims the allowance for dependents; or

(ii) dependent on the individual for more than 50 percent of support;

(B) unmarried child, stepchild, legally adopted child, or legal ward of any age who is dependent on the individual for more than 50 percent of support and who is prevented by infirmity from engaging in a gainful occupation;

(2) "earnings ratio" means the ratio obtained by dividing the total base period wages of the insured worker by the wages paid in the quarter of the base period in which the worker was paid the greatest amount of wages.

worker before the illness, disability, hunting, fishing, medical travel, jury service, or funeral attendance.

(b) A waiver of disqualification for an illness or disability under (a)(1) of this section may not exceed six consecutive weeks.

(c) An insured worker is disqualified for waiting-week credit or benefits for a week of unemployment while the insured worker is pursuing an academic education. A disqualification under this subsection begins with the first week of academic instruction and ends with the week immediately before the first full week in which the insured worker is no longer pursuing an academic education. However, an insured worker who has been pursuing an academic education for at least one school term and who was working at least 30 hours a week during a significant portion of the time that the worker was pursuing an academic education is not disqualified for waiting-week credit or benefits under this subsection if the worker's academic schedule does not preclude full-time work in the worker's occupation and if the insured worker became unemployed because the worker was laid off or the worker's job was eliminated. In this subsection,

(1) "pursuing an academic education" means attending an established school in a course of study providing academic instruction of 10 or more credit hours per week, or the equivalent;

(2) "school" includes primary schools, secondary schools, and institutions of higher education.

Sec. 23.20.379. Voluntary quit, discharge for misconduct, and refusal of work.

(a) An insured worker is disqualified for waiting-week credit or benefits for the first week in which the insured worker is unemployed and for the next five weeks of unemployment following that week if the insured worker

(1) left the insured worker's last suitable work voluntarily without good cause; or

(2) was discharged for misconduct connected with the insured worker's last work.

(b) An insured worker is disqualified for waiting-week credit or benefits for a week and the next five weeks of unemployment following that week if, for that week, the insured worker fails without good cause

(1) to apply for available suitable work to which the insured worker was referred by the employment office; or

(2) to accept suitable work when offered to the insured worker.

(c) The department shall reduce the maximum potential benefits to which an insured worker disqualified under this section would have been entitled by three times the insured worker's weekly benefit amount, excluding the allowance for dependents, or by the amount of unpaid benefits to which the insured worker is entitled, whichever is less.

(d) The disqualification required in (a) and (b) of this section is terminated if the insured worker returns to employment and earns at least eight times the insured worker's weekly benefit amount.

(e) An insured worker is disqualified for waiting-week credit or benefits for the first week in which the insured worker is unemployed and for the next 51 weeks of unemployment following

(1) while attending the training, the individual is not available for work, fails to seek work, or refuses work; or

(2) the individual left work that was not suitable employment to enter training.

(c) In (b)(2) of this section, "suitable employment" means work that

(1) pays at least 80 percent of the individual's average weekly wage, as determined for the purposes of the Trade Act of 1974; and

(2) is at least equal in skill level to the individual's past adversely affected employment, as defined for purposes of the Trade Act of 1974.

(d) An otherwise eligible individual may not be denied benefits or waiting-week credit for any week because the individual is in any training approved under P.L. 105-220 (Workforce Investment Act of 1998) and, while attending the training, is not available for work, fails to seek work, or refuses work.

Sec. 23.20.383. Labor dispute disqualification.

(a) An insured worker is disqualified for waiting-week credit or benefits for a week of the insured worker's unemployment if, for that week, the department finds the insured worker's unemployment is due to a stoppage of work caused by a labor dispute at the immediate establishment or other premises at which the insured worker is or was last employed. For the purposes of this section, each separate department of the same premises which is commonly conducted as a separate business in separate premises is considered a separate establishment or other premises.

(b) This section does not apply if the department finds that

(1) the insured worker was not participating in or directly interested in the labor dispute that caused the insured worker's unemployment, and the insured worker did not belong to a grade or class of workers that, immediately before the commencement of the dispute, had members employed at the premises at which the labor dispute occurred who were participating in or directly interested in the labor dispute; or

(2) the labor dispute is caused by the failure or refusal of the employer to comply with an agreement or contract between the employer and the insured worker, or a state or federal law pertaining to hours, wages, or other conditions of work.

Sec. 23.20.385. Suitable work.

(a) Work may not be considered suitable and benefits may not be denied under a provision of this chapter to an otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) if, as a condition of being employed, the individual would be required to join a company

union or to resign from or refrain from joining a bona fide labor organization.

(b) In determining whether work is suitable for a claimant and in determining the existence of good cause for leaving or refusing work, the department shall, in addition to determining the existence of any of the conditions specified in (a) of this section, consider the degree of risk to the claimant's health, safety, and morals, the claimant's physical fitness for the work, the claimant's prior training, experience, and earnings, the length of the claimant's unemployment, the prospects for obtaining work at the claimant's highest skill, the distance of the available work from the claimant's residence, the prospects for obtaining local work, and other factors that influence a reasonably prudent person in the claimant's circumstances.

(c) This section shall be given the same meaning as the Secretary of Labor gives to 26 U.S.C. 3304(a)(5) (Internal Revenue Code of 1954).

Sec. 23.20.387. Disqualification for misrepresentation.

(a) An insured worker is disqualified for benefits for the week with respect to which the false statement or misrepresentation was made and for an additional period of not less than six weeks or more than 52 weeks if the department determines that the insured worker has knowingly made a false statement or misrepresentation of a material fact or knowingly failed to report a material fact with intent to obtain or increase benefits under this chapter. The length of the additional disqualification and the beginning date of that disqualification shall be determined by the department according to the circumstances in each case.

(b) A person may not be disqualified from receiving benefits under this section unless there is documented evidence that the person has made a false statement or a misrepresentation as to a material fact or has failed to disclose a material fact. Before a determination of fraudulent misrepresentation or nondisclosure may be made, there must be a preponderance of evidence of an intention to defraud, and the false statement or misrepresentation must be shown to be knowing and to involve a material fact.

(c) The insured worker shall be notified of the department's determination under this section as provided in [AS 23.20.340](#)(f) and may appeal the determination as provided in [AS 23.20.415](#).

Sec. 23.20.390. Recovery of improper payments; penalty.

(a) An individual who receives a sum as benefits from the unemployment compensation fund when not entitled to it under this chapter is liable to the fund for the sum improperly paid to the individual.

(b) The department shall promptly prepare and deliver or mail to the individual at the individual's last address of record a notice of determination of liability declaring that the individual has been determined liable to refund the amount of benefits to which the individual is not entitled. The amount, if not previously collected, shall be deducted from future benefits payable to the individual. However, the department may absolve liability to the fund for repayment of all or a portion of those benefits if the department determines that an individual has died or has acted in good faith in claiming and receiving benefits to which the individual was not entitled and recovery of those benefits would be against equity and good conscience.

(c) For similar cause and in the same manner, a claim by another state for the recovery of sums

ity. However, if the individual was incapacitated for the greater part of a quarter to be included in the extension, that quarter will be omitted and the next preceding quarter used if this action will benefit the individual. A quarter may not be omitted for any other reason.

(5) Wages earned in a quarter included in the extension of the base period will be added to any wages earned in the corresponding quarter of incapacity in the regular base period.

(6) To compute the reduction in maximum benefits payable under the current determination as a result of the reuse of wages on which benefits were paid under an earlier determination, the following method will be used:

(A) divide the amount of wages reused in the current determination by the total amount of base period wages used in the earlier determination;

(B) multiply the quotient determined under (A) of this paragraph by the amount of benefits paid on the earlier determination; and

(C) subtract the dollar amount, ignoring cents, determined under (B) of this paragraph from the maximum benefits payable under the current determination.

(c) Repealed 3/24/85.

(d) The following standards will be used to determine the allowance for dependents payable to an individual:

(1) Repealed 4/28/95;

(2) Repealed 4/11/90;

(3) Repealed 4/28/95;

(4) An additional allowance for a dependent acquired by birth or adoption during the benefit year will be paid beginning with the week in which an individual claims the additional dependent, if the total allowance for dependents does not exceed \$72 for each week of unemployment;

(5) If an individual claims a dependent who is not lawfully in the individual's physical custody, the director may require the individual to provide a notarized statement from the custodial parent or legal guardian or other evidence that clearly demonstrates that the individual claiming the allowance provides or, for the 12 months before the request for the dependent's allowance or since the loss of custody, whichever is less, has provided more than 50 percent of the support of that dependent;

(6) A child is "lawfully in an individual's physical custody" if

(A) the child is residing with the individual when the claim for the dependent's allowance is filed; and

(B) the individual has either sole or joint legal custody of the child;

(7) As used in AS 23.20.350(g)(1), "legal ward" means a dependent who has been placed in the custody of an individual by court order.

(6) A written redetermination will be issued under AS 23.20.340(b) at any time within one year after the date of the initial determination made under AS 23.20.340(a) if additional information from any source shows the original determination to be in error. However, a redetermination will not be issued until each interested party is given an opportunity to answer any additional information that is adverse to the party's interests. (Eff. 11/7/80, Register 76; am 10/12/97, Register 144; am 3/4/2006, Register 177)

Authority: AS 23.20.045 AS 23.20.340

8 AAC 85.090. ALLOCATION OF REMUNERATION TO SPECIFIC PERIOD

Repealed 11/8/80.

8 AAC 85.095. VOLUNTARY QUIT, DISCHARGE FOR MISCONDUCT, AND REFUSAL OF WORK

(a) A disqualification under AS 23.20.379(a) and (b) remains in effect for six consecutive weeks or until terminated under the conditions of AS 23.20.379(d), whichever is less. The disqualification will be terminated immediately following the end of the week in which a claimant has earned, for all employment during the disqualification period, at least eight times his weekly benefit amount, excluding any allowance for dependents. The termination of the disqualification period will not restore benefits denied for weeks ending before the termination. The termination does not restore a reduction in maximum potential benefits made under AS 23.20.379(c).

(b) The maximum potential benefits to which a claimant disqualified under AS 23.20.379(a) and (b) would have been entitled will be reduced under AS 23.20.379(c), even if no continued claim has been filed for a week within the disqualification period.

(c) To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:

(1) leaving work due to a disability or illness of the claimant that makes it impossible for the claimant to perform the duties required by the work, if the claimant has no other reasonable alternative but to leave work;

(2) leaving work to care for an immediate family member who has a disability or illness;

(3) leaving work due to safety or other working conditions or an employment agreement related directly to the work, if the claimant has no other reasonable alternative but to leave work;

(4) leaving work to accompany or join a spouse at a change of location, if commuting from the new location to the claimant's work is impractical; for purposes of this paragraph, the change of location must be as a result of the spouse's

(A) discharge from military service; or

(B) employment;

8 AAC 85.095

(5) leaving unskilled work to attend a vocational training or retraining course approved by the director under AS 23.20.382, only if the claimant enters the course immediately upon separating from work;

(6) leaving work in order to protect the claimant or the claimant's immediate family members from harassment or violence;

(7) leaving work to accept a bona-fide offer of work that offers better wages, benefits, hours, or other working conditions; if the new work does not materialize, the reason for the work not materializing must not be due to the fault of the worker;

(8) other factors listed in AS 23.20.385(b).

(d) "Misconduct connected with the insured worker's work" as used in AS 23.20.379(a)(2) means

(1) a claimant's conduct on the job, if the conduct shows a wilful and wanton disregard of the employer's interest, as a claimant might show, for example, through gross or repeated negligence, willful violation of reasonable work rules, or deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee; willful and wanton disregard of the employer's interest does not arise solely from inefficiency, unsatisfactory performance as the result of inability or incapacity, inadvertence, ordinary negligence in isolated instances, or good faith errors in judgment or discretion; or

(2) a claimant's conduct off the job, if the conduct

(A) shows a willful and wanton disregard of the employer's interest; and

(B) either

(i) has a direct and adverse impact on the employer's interest; or

(ii) makes the claimant unfit to perform an essential task of the job.

(e) A discharge for an act that constitutes commission of a felony or theft will result in a disqualification for benefits under AS 23.20.379(e) if

(1) charges are filed against the claimant or the employer has reported the act to the appropriate law enforcement authority;

(2) the felony or theft is "misconduct connected with the insured worker's work" under (d) of this section; and

(3) a preponderance of the evidence establishes that

(A) the claimant committed the act; and

(B) the act was not justified under AS 11.81.300 - 11.81.450.

(f) An acquittal, plea to a lesser charge, or dismissal of charges does not prevent a disqualification for benefits under (e) of this section, if a preponderance of evidence supports that disqualification.

(g) For purposes of this section

(1) "felony" means an act classified as a felony in AS 11; and

(2) "theft" means an act described in AS 11.46.100, if the value of the property or service is \$50 or more.

(3) "disability or illness" means a disability or illness that necessitates care for the disabled or ill person for a period of time longer than the employer is willing to grant leave, paid or otherwise;

(4) "immediate family member" means a person who is related to the claimant by blood, marriage, or adoption as a parent, child, spouse, brother, sister, grandparent, or grandchild.

155.1 CARE OF FAMILY MEMBER

A worker who leaves work to care for an ill or disabled family member leaves work with good cause if the employer would not grant a leave of absence or a leave of absence was not practical in their situation. While the worker does have to make an attempt to preserve their employment by requesting leave, the worker does not have to explore alternative care for the family member prior to quitting.

A worker does not have good cause to leave work to care for a family member who is not ill or disabled.

A. Regulation:

8 AAC 85.095(c)

To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:

(2) leaving work to care for an immediate family member who has a disability or illness;

8 AAC 85.095(g)

For purposes of this section

(3) "disability or illness" means a disability or illness that necessitates care for the disabled or ill person for a period of time longer than the employer is willing to grant leave, paid or otherwise;

(4) "immediate family member" means a person who is related to the claimant by blood, marriage, or adoption as a parent, child, spouse, brother, sister, grandparent, or grandchild.

B. Obligation to Provide Care

In the case of caring for someone who is ill or disabled, there is a moral or legal obligation only if the ill or disabled person is a member of the immediate family. Immediate family is defined as a person who is related to the claimant by blood, marriage, or adoption as a parent, child, spouse, brother, sister, grandparent, or grandchild.

Leaving work to care for someone who is ill or disabled can establish good cause when:

- The individual is an immediate family member;
- The care requires the individual to leave work;
- The employer does not accommodate the claimant's request for time off; and,

- The illness or disability is verifiable. Verification does not need to come from a physician, but can come from other qualified professionals such as counselor or health worker. Verification is not required in all cases, but can be requested when the claimant's credibility is in question.

Example: A claimant quit her job in order to move to Spokane to care for her mother-in-law, who needed 24-hour care. The family had explored other options, and the brother-in-law had been providing the care, but now the claimant's husband felt it was his turn. The Tribunal held that the necessity of the care provided compelling reasons for leaving work. (98 2666, January 12, 1999)

Example deleted.

The type of care the claimant provides does not necessarily have to be only medical care. Anything the family member is unable to do on their own such as bathing, dressing, driving, household chores, etc. may be considered caring for the family member.

An individual may establish good cause to quit without requesting leave if the situation was an emergency and the claimant did not have time to notify the employer prior to leaving.

C. Terminal Illness or Death of Immediate Family Member

Quitting work to be with a terminally ill family member is generally not good cause unless the claimant actually provides care, as described above, to an immediate family member.

The necessity to attend a funeral is seldom good cause for voluntarily leaving work. If attendance at the funeral requires travel, a leave of absence for a reasonable time usually can be arranged.

If bereavement makes it impossible for the claimant to work, see VL 235 Health.

D. Obligation to Provide Care for a Family Member who is not Ill or Disabled

Leaving work to provide care for a family member who is not ill or disabled is without good cause. Workers need to arrange for care to be provided by other care-givers.

155.2 HOME, SPOUSE, OR CHILDREN IN ANOTHER LOCATION

Regulation: 8 AAC 85.095(c)(4)

8AAC85.095(c)

To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:

(4) leaving work to accompany or join a spouse at a change of location, if commuting from the new location to the claimant's work is impractical; for purposes of this paragraph, the change of location must be as a result of the spouse's

- (A) discharge from military service; or-*
- (B) employment;*

A. Employment of Spouse

To establish good cause when quitting work to accompany or join a spouse at a new location, it must be shown:

- **The spouse has accepted new work, been transferred by his employer, or discharged by the military;**
- **It is impractical to commute from the new location;**
- **The move is in a timely manner in relation to leaving work.**

Good cause can be established if the worker's spouse accepts new work, is transferred by a current employer including the military, or is discharged by the military to a new location from which it is impractical to commute. Local commuting patterns should be considered when determining if the move is necessary.

Example: The discharge of a worker's military spouse or the transfer from one duty station to another under the direction of military orders gives the worker good cause for voluntarily leaving work, as long as the move is timely (9224967, September 4, 1992.)

B. Other Reasons to Move

Under the regulation, other reasons to move do not provide the claimant with good cause to quit. These other reasons may include housing difficulties, to move with a spouse who is attending school, to maintain the family unit, or to improve the family circumstances.

Example: In denying benefits to a claimant who quit to follow his wife to where she was attending school, the Commissioner held, " If the claimant

had quit his job to attend academic instruction in another state, it would not be deemed a compelling reason. . . . Likewise, his wife's decision to move to another state on a temporary basis to further her education cannot be considered a compelling reason for the claimant to quit his job." (96 2132, December 12, 1996)

C. Timing of the Move

In addition, **the worker must not leave work before it is necessary to do so.** See VL 160.F. Time of Leaving for a complete discussion.

D. Possibility of Commuting

If it is impractical to commute from the worker's new residence to the worker's workplace, then the worker has good cause for voluntarily leaving work if the reason for the move was with good cause. (9122720, January 23, 1992.) Local commuting patterns should be considered when determining good cause.

E. Section deleted.

F. Home in Another Location

For cases where the claimant's principal residence is in another location, but rejoining the family is not a factor. See VL 425.C Determination of Suitability,

155.45 HARASSMENT OR VIOLENCE BY EX-SPOUSE OR OTHERS

8AAC 85.095(c)

To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:

(6) Leaving work in order to protect the claimant or the claimant's immediate family member from harassment or violence;

Harassment, violence, or the fear of violence by a spouse, an ex-spouse, or another person is sometimes given as the reason for a quit, usually to move from the area.

It is not required that a person in fear of harm seek legal sanctions before leaving work. However, verification of domestic violence can be requested if the claimant's credibility is in question. The verification need not come from law enforcement officials. Any qualified professional from whom the individual sought assistance such as counselor, shelter worker, clergy, attorney, or health worker will suffice. The state must accept any other kind of evidence that reasonably proves domestic violence. Verification is not needed in all situations.

1. Leaving without relocating

Ordinarily a worker who leaves more than one or two days in advance of any anticipated change, such as a new job, negates any compelling reasons for the quit. However, exceptional circumstances may allow additional time.

Example: A claimant quit her job with one airline in order to take a job with another. She had to attend a month-long school for the second airline, and quit the job five days, including a weekend, before the start of the school. The Commissioner, in over-ruling the Tribunal, held that she was virtually assured of passing the training and thus of securing the job. Therefore, since the start of the job was delayed due to circumstances beyond her control, she had good cause for quitting when she did. (97 1130, August 12, 1997)

Example: A claimant quit her job when the employer sold the company and announced that there would be a reduction in pay. Because she quit three days before the reduction was to begin, the Tribunal held that she quit without good cause. (99 0821, May 3, 1999)

2. Leaving and relocating

Commonly, a worker who plans to relocate quits work earlier than the departure date in order to prepare for moving. These tasks are seldom a compelling reason for voluntarily leaving work early because the worker can accomplish these tasks outside working hours. Of course, a worker does not need to work until the date that the worker leaves. In the absence of exceptional circumstances, a worker who quits work no more than a few days prior to the worker's departure date has voluntarily left work for good cause (9122720, January 23, 1992.) **Quitting ten calendar days in advance of a move does not negate compelling reasons, and up to 23 days may be allowed if the circumstance warrants the need for additional time.**

Example: A claimant quit his job to move with his wife who had a stroke and needed to relocate to better medical facilities. He had quit expecting that the sale of his house would close soon. It was delayed, but the Tribunal held that the delay was not his fault, and therefore he had good cause for quitting when he did. (97 1680, August 14, 1997)

Example: A claimant quit her job in order to move from Kodiak to Anchorage for her husband to participate in a necessary medical study/treatment program. She left the job August 11, and arrived in Anchorage August 16. However, because the Fosters did not know

when the program was due to begin, except that it would be in early September, the Tribunal denied benefits, holding that she had left too far in advance of the program's start date. (98 1963, October 1, 1998)

Example: A claimant quit her job in order to rejoin her husband, who had left the military four months previously and relocated to Vermont where he had a job. The claimant wanted to wait to move until her children had finished their current school year. She then took a two-week vacation to run out her leave, which she thought she would otherwise have lost. She used the time to prepare to move. Because she had time to prepare for the move, the Tribunal, in denying benefits, held that she had quit too far in advance of moving. (99 1716, July 28, 1999)

In the case of a transfer of a worker's military spouse under military orders, a worker who quits work within ten days of the orders to clear post has voluntarily left work for good cause.

Example: A claimant voluntarily left work to accompany her military spouse who was ordered to transfer to a new duty station. Although the claimant knew for over a year of her spouse's transfer, the claimant quit 21 days ahead of the move. The Commissioner held that the period of 21 days between the date that the claimant left work and the date that the claimant planned to depart for the new duty station was excessive, and therefore, the claimant voluntarily left work without good cause. (94 9543, March 17, 1995)

What the worker does while in transit from one duty station to another does not negate good cause for the worker's quit. **However, there is a question of the worker's availability for work during the period between the worker's leaving work and the worker's arrival at the new duty station.**

3. Resignation while on leave

If the worker is on leave, the worker's resignation date may be some distance from the time at which the worker actually leaves, providing that there would have been no work for the worker with that employer in the intervening period.

Example: A claimant resigned from her job as a teacher to relocate in order to care for her elderly and partially incapacitated parents. She timed her resignation date to coincide with the last day of school, but did not move until August. In allowing benefits, the Tribunal held that she had compelling reasons to care for her parents, and that there would have been no work for her with the

15 ABSENCE OR TARDINESS

Separations due to absence from work must first be carefully examined to determine the moving party. In some cases, a worker may be absent from work with no intention of returning. The employer's subsequent action to discharge the worker for the absence does not make the separation a discharge, because the worker has already abandoned the work. Such a separation is considered a voluntary leaving. See VL 135.1 Absence from Work. For cases involving leaving work early, see MC 300.4, D. Temporarily Stopping Work.

The duty to be at work on time and to stay at work is implicit in the contract of hire. This duty is not, however, absolute. It is qualified by the terms of the working agreement, customs and past practices in the occupation and the particular employment, the reason for the absence or tardiness, and the worker's attempts to protect the employment. In all cases, the injury to the employer may be assumed.

A. Compelling reason

Absence or tardiness without permission is misconduct in connection with the work unless the worker had a compelling reason for the absence or tardiness, and took reasonable steps to protect the job. The compelling reason for absence must continue throughout the period of the absence.

Example: A claimant was discharged from his job because of excessive absences and tardiness. In the final incident, he called in sick with the flu from Monday through Thursday. When the employer learned that the claimant had been playing darts with his league on Wednesday, he discharged him, feeling that if he was well enough to play darts, he was well enough to go to work. The Tribunal concurred, holding that the claimant had substantially disregarded his employer's interest, and had therefore committed misconduct in connection with his work. (98 0438, March 20, 1998)

A discharge resulting from compelling family reasons (domestic violence or the illness or disability of a member of the claimant's immediate family member which necessitates care) does not generally meet the definition for misconduct. However, when an individual fails to notify the employer of an absence, misconduct may be present. Thorough examination of the reason for failing to notify the employer must be conducted.

If a claimant notifies the employer of expected absences to care for an ill dependent and is discharged, the discharge is for reasons other than misconduct.

B. Notice, continual notice and proof

Regardless of the reason for the absence or tardiness, a worker must still properly notify the employer, unless the worker has a compelling reason for the