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5 GENERAL

Law: AS 23.20.505(a)

A. General

A claimant is potentially eligible for a weekly benefit only if the claimant is unemployed during the week for which benefits are claimed.

Clearly, a person who performed no services and earned no wages during a week was unemployed for that week. A person who performs services during the week is still considered unemployed if:

- the person works less than full-time; and
- the wages for the week are less than "excess" --- one and one-third times the weekly benefit amount plus $50 (98 1068, June 1, 1998.)

A claimant who works full-time is not unemployed, regardless of the amount of wages earned, unless the average hourly wages are less than the minimum wage (96 0699 and 96 0819, July 12, 1996.) If the wages are excess the claimant is not unemployed, regardless of the hours worked.

Determining the unemployment status of a claimant requires the answer to two questions:

- Is there a contract of employment under which a claimant performs services for the employer, and if so, how many hours does the claimant work during a week?
- Did the claimant receive wages for the work and if so, how much?

These two factors are considered together. The payment of wages implies an employer/employee relationship even without a formal contract of employment, and the wages that the claimant receives from the employer are deducted in the week in which the work is done. On the other hand, the claimant's performance of service may result in a determination that the claimant is not unemployed, even if the employer pays the claimant no wages. See TPU 80.05 Compensation not Payable or No Work Performed.

See MISC 375.05 Receipt of Other Payments section of the BPM for a definition of wages.

B. Service or Work

The terms "service" and "work," as used in AS 23.20.505, mean employment, occupation, business, trade, or craft -- any effort to make or do something.

Therefore, a claimant is unemployed only when the claimant is performing no service or work. A self-employed claimant or a claimant who is working in other than covered employment is employed for the purposes of this statute if the claimant is performing services or work and receiving, or due to receive, payment for those services.

> Example: A claimant (98 0202, February 23, 1998) was self-employed as a childcare provider and worked 50 or more hours a week in her business. The Tribunal held that she was fully employed.

A claimant's unemployment status is not affected by income that does not result from service, such as where the payment is solely from the investment of capital.

> Example: The owner of a boat who leases it to a crew on a share basis and takes no other part in the fishing venture is not employed under the statute.

C. Full-time

If the wages for a week are less than excess a claimant may be eligible for benefits, but only if the claimant is employed less than full-time or if the claimant earns less than minimum wage (96 0699 & 96 0819, July 12, 1996.) Full-time work is defined as the customary number of hours worked in a week in a given occupation in a given labor market area. Unless the facts clearly indicate otherwise, 40 hours per week is considered full-time.

D. Alternate or Staggered Work Periods

In most cases, a claimant on leave is unemployed, because the claimant is performing no service and receiving no wages.

However, under AS 23.20.505(d), a claimant who receives a week, or weeks, off as part of the normal work schedule is **not unemployed during the time off if the hours for one complete cycle of work and leave average at least 40 hours per week.**

See TPU 80.1 Alternate or staggered work periods, for a complete discussion.

30 APPRENTICESHIP OR PREPARATORY SERVICES

A. General

Claimants may be in employment-related training or apprentice programs either because they expect to be hired at the successful completion of the training or because they have already been hired and are required to attend the training as a condition of continued employment. If the claimant is not yet hired, whether or not an employer has promised to do so, the claimant is unemployed (by that employer) while attending the training, and the training issue itself is adjudicated under the appropriate A&A provisions. Claimants who volunteer for unpaid services with an employer in order to learn the ropes and to show the employer that they are potential hires are considered to be attending training. (*See* AA 40.05, "Attendance at School or Training Course.") If the claimant is employed and is required to attend the training, the Wage and Hour laws require the employer to pay wages for attending such training.

B. Preparatory Training

A claimant is attached to an employer for the purpose of learning a trade or profession is employed if the claimant receives wages for the training period. However, if the wages are less than excess and the training is less than full-time (normally less than 40 hours per week), then the claimant is potentially eligible for reduced unemployment insurance benefits.

If the claimant receives no wages for the training period, then the claimant is unemployed, regardless of the time that the claimant spends in the training. Any unpaid training period is not service (95 2456, October 31, 1995.)

> Example: In the case cited above, the claimant worked as a volunteer on a commercial fishing boat. He worked 100 hours during a two-week period demonstrating his abilities to prospective employers and learning about all aspects of commercial fishing. The claimant received no pay for the volunteer work. Because of his efforts, he was hired full-time by a commercial fisher. In finding that the claimant was unemployed for the time in question, the Commissioner held, "Under the circumstances of this case, the claimant could be most closely described as participating in a period of unpaid training. As such, he was not providing services and no remuneration was expected or received. We find [the policy under the section, 'Preparatory Training,' in TPU 30, 'Apprenticeship or Preparatory Services,'] entirely reasonable."

C. Apprenticeship

An apprentice who works on a job receives wages that are usually a percentage of the journey worker's wages. If the apprentice works full-time or earns excess, then the apprentice is not unemployed. If an apprentice works less than full-time and earns less than excess, then the apprentice is unemployed.

During the apprenticeship program, an apprentice may be laid off from work while continuing formal instruction. The apprentice is unemployed while receiving such training, because the apprentice performs no service for an employer and receives no wages.

40 ATTENDANCE AT SCHOOL OR TRAINING COURSE

AS 23.20.526(d)(5) and AS 23.20.526(d)(6) exclude from the definition of "employment" students who are attending school and working, either as employees of the school or in work-study programs. This exclusion, however, refers only to **coverage**. The working students are employed if they are performing services and receiving wages. They are unemployed in any week in which they perform no services and receive no wages. Any wages that they do receive are deducted from benefits as wages in the week in which the service is performed (Alioth vs. State, 3AN-96-02561 CI, February 5, 1998.)

80 COMPENSATION NOT PAYABLE OR NO WORK DONE

80.05 General

Under AS 23.505(a), a claimant is unemployed if during a week, the claimant performs no services for which wages are payable; or during a week, the claimant performs less than full-time services and receives less than "excess" wages.

A. Service

The term service means performance of work. It does not only mean active work that a claimant performs for an employer. A period in which a claimant has an attachment to an employer and the claimant receives wages, is a period of service.

> Example: In Social Security Board v Nierotko, 327 US 358 (1946), a worker was found to have been wrongfully discharged and entitled to back pay. In determining the back pay should apply to Social Security benefits, the US Supreme Court found that back pay is considered wages, and that service means not only actual work performed, but the entire employer-employee relationship for which the employee is compensated by the employer.

> Example: A claimant appealed to the Alaska Superior Court a decision denying the inclusion of a back pay award as base period earnings. The Court found the statutory definition of wages to be very broad “all remuneration for service from whatever source…”; only payments explicitly excluded by statute are not included in the definition of wages. The court also cited SSA v Nierotko in ruling that service includes the entire employee-employer relationship for which the employer compensates the employee. Allen v State of Alaska 1JU-80-1352 Civ, November 6, 1981)

B. Employer Attachment

Employer attachment alone does not make a claimant employed. Many seasonal workers maintain a tenuous employer attachment during seasonal lay-off. The individual performs no services, receives no wages and so is unemployed; employer attachment without payment does not constitute a period of service.

However, in some situations the worker may not be performing work yet there may be service as part of an on-going employer-employee relationship.

> Example: A claimant was placed on paid leave pending termination. In affirming the Tribunal, the Commissioner ruled that the period of paid leave was a period of ‘service’, the monies paid were ‘wages’ and the

claimant separated from employment when the paid leave ended. (97 0998, October 14, 1997)

When an employee receives payments from the employer during a period when no work is performed, it must be determined if service was performed; and what type of payment was received. See TPU 5 General for criteria to determine if the individual was unemployed.

C. Employer Attachment No Work Performed

The following are examples of situations where the claimant is still attached to the employer, being paid for service, yet no work is being performed.

1. Standby

A worker may be paid to be on-call with an employer. This type of pay is considered wages; the service performed is being ready to perform work if needed. If the stand-by pay is over excess, than the claimant is not eligible for benefits, if the pay is less than excess, the claimant may be eligible for partial benefits.

2. Retainer

A retainer is similar to stand-by pay, although may be paid on a long-term basis. An employer is paying an individual to be ready to perform work if needed. A retainer is also considered wages. See MS 375.05 C. Retainer.

3. Paid Suspension

A worker who is suspended with pay, by the employer is not unemployed under AS 23.20.505(a) because the worker is paid for the “service” of not coming to work for the employer. See MC 440 Separation Date for more information.

4. Paid Leave of Absence

A worker on a paid leave of absence is not unemployed under AS 23.20.505 because the worker is paid for the “service” of not coming to work for the employer. See VL 440 Separation Date for more information.

Leave pay received during an unpaid leave of absence or lay-off period may prolong the employer-employee relationship. See D. Employer Attached No Wages Paid, below.

D. Employer Attached No Wages paid

A claimant who receives no wages is not necessarily unemployed.

1. Used Leave

A claimant who is performing no services yet receiving the equivalent of full time leave pay on a regular pay schedule is still attached to the employer. The worker is unemployed under AS 23.20.505 (a), but the leave pay is deducted under AS 23.20.362(c). The leave pay is attributed to the weeks in which the leave pay is "used". See TPU 80.15 Leave of Absence or Vacation.

Example: A worker on seasonal leave received accrued leave payments on the regularly scheduled pay day for four weeks after his last day of work. He accrued holiday pay for the two holidays during the leave period. He considered himself in "pay status". The Tribunal held:

> "The inclusion of the phrase lump sum in the regulation would seem to require that a distinction be made between regular periodic payments made on the same schedule as for weeks actually worked and a onetime payout of all accrued vacation or holiday pay made shortly after the termination of a workers employment. Only where the check received is a lump sum payment of unused vacation or holidays should it be attributed to the week in which the payment is received". (97 2559, December 22, 1997).

2. Used Sick Leave

In Tribunal review (00 0986, June 20, 2000) a seasonal employee used accrued sick leave during a period of seasonal leave without pay. The Tribunal stated that he was in effect employed while receiving sick leave paid out on the scheduled pay periods until the leave was exhausted, at which time he was laid off. Used leave payments are attributed to the weeks used and deducted under the formula in AS 23.20.362(c).

3. Volunteer

A claimant is not unemployed in a week in which the claimant performs full time services, regardless of whether the claimant receives wages for the week. A claimant must work less than full time and earn wages less than excess to receive unemployment insurance benefits. This situation would be denied as an availability issues because although performing service full time, the claimant is not receiving any wages, and is not considered employed under AS 23.20.505.

E. Comp Time

A claimant who is receiving 'comp time' is not performing services, nor are they considered attached to the employer. Comp time is considered back pay for uncompensated overtime earned while working. As such it is attributed to the weeks in which it was earned. The worker is unemployed under AS 23.20.505(a). The comp time pay is not deducted under AS 23.20.362 as deductible income. It considered earnings but attributed to period in which it was earned. See TPU 5 General or MISC 375.075.B. Back Pay Awards.

F. Working Full-time Earning less than Minimum Wage

"A claimant is unemployed in a week in which the total gross weekly wage divided by the total weekly hours of work is less than the legal minimum hourly wage in effect where the work is performed. For the purposes of this policy, all wages and hours for all employers in the week will be totaled and computed as if for one employer. . . However, if the total gross weekly wage is equal to or greater than one and one-third times the weekly benefit amount plus $50, the claimant is not unemployed, regardless of what the hours of work or hourly wage might be. . . This ruling does not cover self-employed individuals or those working on straight commission. . . The hourly wage should not be a factor in determining full-time work in those cases." (96 0699 & 96 0819, July 12, 1996)

1. Fishermen Working on a Share Basis

Employees paid on a share basis, as is the case of workers on fishing boats, are essentially working on a commission basis. They do not fall under the policy above concerning working full time and earning less than minimum wage; they are an exception to the policy.

80.1 Alternate or staggered work periods

A. Reduction in Hours

An otherwise eligible claimant placed on reduced weekly hours or an alternate weekly schedule is eligible for benefits in any week in which the earnings are less than excess and the hours are less than full-time, provided the claimant is available to work full-time hours. *See* the appropriate A&A section of the BPM for a discussion of the claimant's availability in this situation.

B. Full-time Hours with Staggered or Alternating Schedule

Law: AS 23.20.505(d)

Under some working arrangements, notably maritime and oil field occupations, the full-time work schedule may consist of a period of overtime work alternating with periods of a week or more in which the worker performs no services. For example, the work schedule may consist of a period of "double time" work followed by a non-work period of equal length.

A claimant working under such an arrangement would be considered unemployed during the non-work period under AS 23.20.505(a). Any wages paid would not be for the non-work period because the claimant is not actually performing service during that week. However, AS 23.20.505(d) disqualifies persons whose unemployment is merely a break in their regular work schedule. However, for any week filed, **all** elements must be present before Section 505(d) applies:

- The week must fall partially or wholly within a period of leave lasting 28 days or less. If the period of leave is longer than 28 days, none of the weeks in the period may be disqualified under Section 505(d).

- The leave must be part of the worker's regular work schedule. A special leave requested by the employee or a layoff due to lack of work would not come under this provision.

- The working hours for one complete cycle of work and leave must average at least 40 hours per week.

  Example: An Alaska Marine Highway employee works an alternating schedule of 84 hours per week, followed by one week off. This employee is therefore not unemployed under Section 505(d) during the week off because the leave is less than four weeks; the leave is part of the regular work schedule; and the average hours for one cycle of work and leave is 42 hours per week (84 hours divided by two weeks).

Example: A claimant's work schedule consists of eight hours per day, seven days per week, for four weeks. The claimant then receives one week off. This cycle is repeated. This claimant is also ineligible under Section 505(d). The total hours worked during the cycle (8 hours x 7 days x 4 weeks = 224 hours, when divided by the number of weeks in the cycle (5), gives an average of over 44 hours per week.

Example: A construction worker is laid off for one week due to weather conditions after working several 60-hour weeks. This claimant is unemployed under Section 505(a) and (d). Although average hours, including the week off, are greater than 40 per week, the week off is not part of the normal work schedule.

Example: A worker shares a job with another employee, with each working alternate forty-hour weeks, one week on and one week off. In the weeks in which they are not working, they are unemployed, because their work and leave do not average 40 hours per week.

80.15 Leave of absence or vacation

Law: AS 23.20.362(c)
Regulation: 8 AAC 85.140

The regulation 8AAC 85.140 makes the distinction between used and unused leave pay. Unused leave pay, received as a lump sum from a base period employer, usually at time of termination, is deducted in the week received, per the regulation 8AAC 85.140.

> Example: In 06 0491, June 16, 2006, the Commissioner held he had no authority to hold contrary to the clear wordage of the law and found the lump sum payment of accrued leave was deductible from benefits the week it was received.

Leave that is used, paid on the regular periodic pay schedule by the base period employer, is attributed to the weeks in which it is used under the statute AS 23.20.362(c).

> Example: In 97 2559, December 22, 1997, a claimant went on paid leave at the end of his seasonal job with the Bureau of Land Management. He was paid for holidays during the leave period. The Tribunal made the distinction between lump sum payments upon termination and used leave payments made on a regular pay schedule while attached to the employer. Because the claimant was "using" leave and did not receive a lump sum payment, the leave pay was attributed to the weeks in which it was used and the holiday pay attributed to the week of the holiday.

Vacation leave that is "used" indicates the existence of an ongoing employer-employee relationship. While not performing work while on leave, the claimant is receiving leave pay on regularly scheduled pay days during a period of attachment to an employer. The attachment may be demonstrated by continuing accrual of leave, continuing accrual of time in service, and on-going employee health insurance coverage. Employees may be considered to be "in pay status".

In these situations the worker is considered attached to the employer although performing no services and receiving no wages. While on paid leave they are receiving leave pay and continue to receive employee benefits. The separation date would be at the conclusion of the paid leave. (97 0998, October 14, 1997) See VL 440 Separation Date.

However because the individual does not meet both criteria in AS 23.20.505(a), receiving wages and performing services, a denial as fully employed is not appropriate. Instead the leave pay is deducted and availability for work should be examined.

80.2 Shutdown

A temporary plant shutdown for repair or maintenance, resulting in a worker's unemployment, is treated in the same way as any other layoff due to lack of work. A worker who performs less than full-time services for the week and earns wages less than "excess" is unemployed.

Often a plant shutdown is timed to coincide with a holiday or a required period of vacation for all employees. This does not affect the claimant's unemployment status. The claimant is still unemployed under AS 23.20.505. However, vacation and holiday pay must be deducted in accordance with AS 23.20.362.

105 CONTRACT OBLIGATION

Certain professionals, such as teachers, athletes, actors, consultants, musicians, and the like, normally work on a contract basis. While the contract is in effect, the worker is employed up to the limit set by the contract. If the contract provides for full-time service or wages that are more than excess, then the claimant is not unemployed and is not eligible. If the contract calls for less than full-time service and less than excess wages, the person is partially unemployed and is potentially eligible. If the contract calls for no service of even a standby nature, and no wages, the claimant is totally unemployed, even if the contract is still in effect and the employer/employee relationship continues.

For guidance in determining whether a contract obligation affects a claimant's availability for work, *see* AA 105, "Contract Obligation."

110 CORPORATE OFFICER

Employment as a corporate officer, like any other employment, may be full-time or part-time. If the hours are less than full-time and wages are less than excess, the claimant is eligible under AS 23.20.505. However, before the issue arises, verify that the corporate officer's wages are covered, either because the corporation affirmatively elected coverage for its officers or because the particular officer exercised no executive functions. A corporation is a separate "person" from the officers of the corporation, so that, even though the officer may in fact control whether or not the officer is working, the employment by the corporation is separate from that fact.

A. Primary Employment as a Corporate Officer

The officer must be truly unemployed; that is, not only not being paid by the corporation, but also not exercising any corporate functions with regard to it. A corporate officer who can work as many or as few hours as the officer wishes, is not unemployed within the meaning of AS 23.20.505 as the officer's unemployment is totally within the officer's control.

> Example: The chairperson and chief executive officer of a corporation engaged in seasonal work is also the general manager of the firm, overseeing all operations, and paid a salary in that capacity. During the slack season, the officer no longer functions as general manager, but continues as chairperson of the corporation. The officer still engages in the solicitation of contracts, maintenance of equipment, and the like. This person is considered employed unless both the service is less than full-time and wages less than excess.

However, if a corporation ceases operation because of financial difficulties or other reasons outside the control of the officer, although it would probably be difficult to determine the point where a corporate officer ceases to provide service to the corporation, the point at which the officer stops receiving wages less than excess is the point when the claimant is unemployed.

B. Secondary Employment as a Corporate Officer or Director

A corporate officer may have primary employment elsewhere. If the person loses this regular employment, the person may then be totally or partially unemployed. To determine this worker's status, it is necessary to look at the degree of the officer's involvement in corporate activities and the amount of earnings as a corporate officer. If the corporate position is essentially a figurehead position in which the person performs no service and receives no earnings, the officer is totally unemployed. An officer who works less than full-time in the corporation and receives earnings that are less than excess is potentially eligible for a partial benefit.

> Example: A claimant may be an officer in a family-held corporation mainly for the convenience of the other family members. Such a position may

involve neither duties nor pay, and therefore will not affect the person's unemployment status.

150 FULL-TIME OR PART-TIME WORK

A claimant engaged in full time work is not unemployed and thus not eligible for unemployment benefits.

What constitutes full time work is not defined in the Employment Security Act. It is simply the customary hours worked per week for any given occupation. And while 40 hours per week is the normal full time workweek for most occupations, this may vary by industry, occupation, and locality. In the absence of other indicators, 40 hours per week is considered the standard full time work week. This standard should not be disturbed unless another standard is clearly established. (98 1068, June 1, 1998).

Example: State of Alaska employees work 37.5 hours per work. Although not 40 hours, because virtually all state employees work 37.5 hours/week, it has established a new standard for state workers as to what is full time.

A. Determination of Full Time Not Made by Employer

A declaration by the employer that a given shift, when less than 40 hours per week, is a full time shift is insufficient to establish a new standard. Employers cannot simply designate part time hours as full time hours, regardless of the hours the business operates, or by employing more workers on a part time basis.

“The purpose of the 'less than full-time' provision in AS 23.20.505(a) is to compensate claimants for employers' failure to provide sufficient work. This purpose is negated if employers can simply reduce hours to any level they choose and prevent payment of unemployment insurance benefits on the theory that they have now established a new full-time work standard. A new standard certainly cannot be established by simply assigning fluctuating hours less than 40, or by the employer's belief that 'anything over 30' is full-time.”

B. Working Full time Earning Less than Minimum Wage

Under the statute, fully employed can be met in two ways, by performing full-time services (i.e., 40 hours a week) or by earning wages more than excess earnings (1.3333 X wba plus $50). If a claimant works 40 hours or more, per week, the claimant is considered fully employed; or if the wages exceed excess earnings, the claimant is fully employed regardless of the hours worked.

However this is not true for a claimant who works full time, 40 hours, but earns less than minimum wage.

Example: A claimant worked as a baby sitter in the employer’s home working 16 – 40 hours per week and earning $20 - $50 per week. She was available to accept other work, as the parents were willing to assume care of the children on short notice. The claimant reported her hours and her earnings. She was denied retroactively and an overpayment

established when it was determined she had been working 40 hours or more in some of the weeks. The Commissioner ruled she was eligible for benefits because although working 40 hours per week she was earning less than minimum wage. (96 0819, July 12, 1996)

In determining that the claimant was not fully employed the Commissioner stated:

"The statute assumes that a claimant working full time is making at or near the excess earnings amount. The statute also assumes that a claimant earning only $50 in wages is working less than full time. Only a claimant earning below the legal minimum can work 40 hours and make $50. Such cases are rare but ignoring wages in these cases works against the purpose of the provision and of the Act as a whole."

"Moreover the current application of AS 23.20.505 creates a potential conflict with the Dept other statutory wage and hour enforcement mandates. It puts the Dept in the position of completely withdrawing the protection of the unemployment compensation fund from a claimant who is earning a wage below minimum." (96 0699, 960819, July 12, 1996)

C. Self employed or Working on a Commission Basis

The standard established in Fisher, working 40 hours per week but earning less than minimum wage, does not apply to self employed or those working on a commission basis.

Individuals employed on a commission basis or self-employed have chosen occupations that do not guarantee an hourly wage, and they may put in significant time without compensation in anticipation of future income. The hourly wage should not be a factor in determining full time work in those cases.

In Commissioner decision 96 0819, the Commissioner stated, "We do not intend to abolish the 40 hour standard for determining full time work. We are fully aware of the desirability of applying a consistent full time work standard for all eligibility requirements, including availability for work. We are simply clarifying the definition of full time work for purposes of AS 23.20.505 only to address sub minimum wages".

Example: The claimant worked as a commissioned real estate agent, not an employee. He indicated he was working 40-50 hours per week. "The statue makes no distinction between working in one's own business or working for an employer. If the claimant is employed full time during a week he is not eligible for benefits". (94 7970, August 1995)

D. Fluctuating Hours

In some cases, it may be impossible to establish exactly the normal full-time workweek for a particular claimant. For example, the hours in certain occupations, such as retail, may fluctuate a great deal. In these cases, 40 hours per week should also be considered a full time work week.

305 MILITARY SERVICE

A. Employment Status

Military service is service or work for the purposes of AS 23.20.505, and an individual serving in the regular armed forces is fully employed.

The unemployment status of a claimant who is serving as a member of a reserve component such as the National Guard or Naval Militia depends on the amount of time engaged in such service each week. Weekend or evening drill does not make the claimant fully employed. However, where training or drill takes up the full-time working hours in the claimant's occupation, the claimant is considered fully employed. A claimant who goes to an encampment is under orders from the branch of service and is considered fully employed by the branch of service for that period. If the claimant reports excess earnings for the week, there is no reason to write a formal nonmonetary determination. However, if the claimant reports partial wages, write a nonmonetary determination citing AS 23.20.505.

B. Wages Based on Military Service

Wages based on military service may be used only if the claimant received an honorable discharge and completed his first full term of service, unless an exception applies. Use of these wages is based on military records and denial of their use is appealed directly to the military.

> Example: A claimant (97 2208, November 30, 1997) served in the military for less than one full term of service. His wages were not usable in establishing a claim.

325 ODD-JOB OR SUBSIDIARY WORK

The unemployment status of a worker doing odd-job or subsidiary work is the same as that with any other job and depends on whether the worker is performing services and earning wages.

A. Odd jobs

Odd jobs are work such as mowing lawns, raking leaves, or shoveling snow. Such work can be either employment or self-employment, and, in either case, earnings from such work are deductible from the weekly benefit amount. A claimant doing such work is fully employed to the extent that the claimant is working full-time or earning excess wages. A claimant who is employed less than full-time and earning less than excess wages is unemployed.

B. Subsidiary Work

Subsidiary work is incidental or extra work that is usually performed by the claimant when working at the claimant's regular job and which the claimant continues to do when not working the regular job. This may include fraternal, religious, or charitable work, or union work, whether compensated or uncompensated. The question again is whether the worker is performing services and receiving payment. If the work is full-time or the wages are excess, the claimant is employed. However, if the compensation is both less than excess and less than the minimum wage, the claimant is not employed, even if the work is full-time. However, the availability issue must also be adjudicated.

Subsidiary work may also include work on the claimant's own property. A claimant who is performing such work but not developing the property for profit is not self-employed. Neither is the claimant considered "employed," since the claimant is performing no service under a contract of hire and no wages are payable. Again, the availability issue must be adjudicated.

C. Picket Duty

Picket duty may or may not be employment depending on the conditions under which the claimant is paid for picket duty. If the amount of payment is dependent upon the performance of picket duty, the claimant has earned wages for service. If the claimant is paid according to need or some other criteria that is not dependent upon whether the person is actually picketing, the payment is not wages and therefore the claimant is not employed.

370 PUBLIC SERVICE

370.05 General

The unemployment status of claimants in public service depends on whether they are performing services and receiving wages.

Since AS 23.20.530 defines wages as all remuneration from any source, wages clearly include payment from public service. Therefore the unemployment status of a claimant in public service is determined on the same basis as that of a claimant in private employment. If the service is done full-time or the wages received are excess, the claimant is not unemployed, and therefore ineligible. If the service is performed part-time and wages are less than "excess," the claimant may be eligible. The fact that some public service employment is not insured under the Act is irrelevant in determining a claimant's unemployment status.

370.1 Jury duty

Law: AS 23.20.526(a)(18)

A claimant who is serving as a juror is not employed. However, since wages include all remuneration from any source, payment for service as a juror is wages and must be deducted from benefits otherwise due. The juror is eligible for the weekly benefit amount, minus any applicable earnings from jury duty.

Service as a prospective or impaneled juror waives the availability requirement; however the juror must be in compensable claims status. See AA 370 "Jury Duty and Service as a Witness."

Service as a witness under subpoena is considered in the same light as jury duty.

370.15 Public Office

The performance of services by an official holding public office is work or service in the same manner as for any other employment. An official who performs services full-time is fully employed and ineligible under AS 23.20.505. If the service is less than full-time and wages are less than excess, a public official may be eligible for a total or partial benefit, like any other partially employed claimant.

A claimant who is otherwise unemployed and merely seeking public office is not employed. The office-seeking activity may, however, affect the claimant's availability for work.

395 RELIEF WORK OR PUBLIC ASSISTANCE

Public assistance and relief payments include aid for families with dependent children, food stamps, old age assistance --- not to be confused with old age and survivor's insurance under Social Security --- assistance for expectant mothers, and general relief assistance. These payments are based on need, not on the performance of service. In most, if not all cases, the amount of assistance is adjusted by the amount of unemployment insurance that the applicants receive. Such payments are therefore not wages and do not affect the claimant's unemployment status.

Welfare recipients, when able to do so, are sometimes required to work for their payments. Under the Welfare to Work program, for example, a recipient may be placed in work experience for the purpose of establishing or maintaining work habits and skills. The amount of the payment in such cases is based on need, and any work required is subsidiary to the determination of need and the allowance of aid. Although the recipient may be assigned specific hours of work, these are often less than full-time, and the recipient may be excused to accept regular employment or attend job interviews. The welfare recipient is therefore not considered employed by the welfare agency or the participating employer, and the payments received are not wages.

415 SELF-EMPLOYMENT

Law: AS 23.20.505 (a)

Law: AS 23.20.525(a)

Self-employment is not "employment," and a claim cannot be established on the basis of self-employment.

A claimant may be seeking self-employment, and pursuing a course of action that will lead to that end. But, until the self-employment actually results in provision of services to others, the claimant is not disqualified for self-employment alone, as long as the claimant is able and willing to accept other fulltime employment.

> Example: A claimant was an electrician and worked through his union. He began establishing his own business as an electrical contractor, putting in up to 50 hours per week. Once his business was established, he would be required to get off his union's out-of-work list. The Commissioner stated, " The claimant in the case now before us is neither providing any service as of yet, nor is he engaged in any activity that could now provide him with remuneration. . . . Because the statute expressly provides in the definition that services are provided, we hold that the claimant does meet the definition of an unemployed individual under his present circumstances. We hold that until he actually opens his business, whether in a fixed location or for contracts with customers, that he is to be still considered as unemployed. As long as he is simply preparing to go into business, we hold that the disqualifying provisions of the statute do not apply." (95 2175, October 9, 1995)

Payment from self-employment is wages when the self-employment involves service. In Maguire (82H-FSC-272, February 7, 1983) the Commissioner defined the term, "services:"

The term "services" as used in AS 23.20.505 normally is interpreted as "the performance of labor for the benefit of another" in order to distinguish it from the mere possession of investments, equipment, rentals, etc. It is not intended to distinguish self-employment from regular employment. Self-employed individuals who perform labor normally are performing and offering a service to others just as are regularly employed individuals.

Self-employment is "labor for the benefit of another," and therefore services, even if the benefit is indirect. A self-employed commercial fisher, miner, trapper, or artist performs services because the work results in a commodity that will benefit another. On the other hand, income from such things as stocks, dividends, interests, or rentals is not wages because no services are performed for the income from them.

A claimant who is self-employed full-time, or whose earnings from self-employment are excess, is not unemployed. In that case, the claimant is denied under AS 23.20.505, and no statement of availability is needed. If the claimant is engaged in self-

employment less than full-time and has earnings that are less than excess, the claimant may be eligible for partial or total unemployment insurance benefits (94 9049, December 28, 1994.)

> Example: A claimant was caring for two children, receiving $200 per week for eight hours a day, and advertising for others. She did not have a business license, although she had applied for one. She stated that if she received an offer of employment, she would quit the business and tell the children's parents to find another care facility. The Tribunal held that she was fully employed in self-employment. (97 0988, May 13, 1977)

However, an adjudicator must review the availability of a claimant partially self-employed carefully. For a discussion of a claimant's availability while engaged in self-employment, *see* AA 415.05, "Self Employment or Other Work General."

For self-employment, as for other types of employment, 40 hours are the normal full-time hours for any week, unless circumstances suggest that another standard is appropriate for the type of self-employment.

> Example: In the case of Wool V. Employment Sec. Div. (No. 4FA-87-2234 Civil, Alaska Superior Court 4th J.D., January 10, 1989,) the claimant, a school teacher, worked from June 1986 through December 1986 as a manager of an ice cream business which he owned with his brother. During part of this period, he was also a part-time teacher. From June 1986 through December 1986, the claimant worked either full-time at the ice cream business or full-time between the ice cream business and his part-time teaching position. The claimant did not receive a salary for his work at the ice cream business but he received "draws," which were a combination of profit from the business and a reclaiming of the initial capital investment that the claimant made in the business. The claimant asserted that he was not employed during this period, and that he was actually seeking full-time or part-time employment. The court held:
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> The relevant statute for determining whether someone is unemployed and thus entitled to benefits is AS 23.20.505 . . . To be unemployed, [the claimant] cannot in any week perform services and receive wages. [The claimant] clearly performed "services" as a manager of [the ice cream business]. He claims that the draws he received were not wages. AS 23.20.530 defines wages as follows:
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> > All remuneration for services from whatever source, including, but not limited to, insured work, uninsured work, or self-employment.
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> The draws he received are remuneration for his services since they included, in part, profit. . . . The department correctly found that [the claimant] was not unemployed during this period as defined in AS 23.20.505.