

REGULATIONS PACKAGES STATUS
AS OF 2/23/2010

The following regulations have been signed into law by the Lt Governor. The effective dates are listed below:

1. 8 AAC 45.105 -- **The provision of code of conduct (for Board members)** and 8 AAC 45.106 – **Procedures for board panel members to avoid conflicts of interest, impropriety, and appearance of impropriety** were signed into law and took effect on 10/29/2009.
2. 8 AAC 45.190 -- **Guardianship** and 8 AAC 45.890 – **Determining employee status** were signed in to law and took effect on December 13, 2009.
3. 8 AAC 45.092(h) – **SIME's**; 8 AAC 45.175 – **Issuance of Subpoena**; 8 AAC 45.176 – **Assessment of Civil Penalties**; and 8 AAC 45.177 -- **Claims against the Benefit Guaranty Fund** were signed into law and took effect on 2/28/2010

The following regulations have been considered and have received final approval by the Workers' Compensation Board, were adopted by the Department of Labor and Workforce Development, and forwarded to the Department of Law for final review before submittal to the Lt. Governor's Office:

1. **Reemployment Benefits Regulations (Packet 1)** which include provisions regarding listing, definition of, application to become, assignment and removal of rehabilitation specialists, reporting requirements, stipulation of eligibility for reemployment benefits, notice of employee rights to reemployment benefits, and changes to definitions was sent over February 9, 2010.
2. **Self Insurance** regulations packet was sent over on February 1, 2010.

The following regulations are still under pending status. Pending status means they are awaiting final approval from the Board and adoption by the Department of Labor and Workforce Development. Public Comment was held and received for the following:

1. Generic Drugs
2. Reemployment Benefits Regulations (Packet 2)

Craig E. Campbell
Lieutenant Governor
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Juneau, Alaska 99811
907.465.3520 465.5400 Fax
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OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA

MEMORANDUM

TO: Sharon Busch, AAC Contact
Department of Labor

FROM: Benjamin Shier 
Special Assistant
907.465.4081

DATE: September 29, 2009

RE: Filed Permanent Regulations: Workers' Compensation Board
Code of Conduct/Procedures for Hearing Panel Members: 8 AAC 45.105; 8 AAC 45.106

Attorney General File:	993-09-0040
Regulation Filed:	9/29/2009
Effective Date:	10/29/2009
Print:	192, January 2010

cc with enclosures: Linda Miller, Department of Law
Jim Pound, Administrative Regulation Review Committee
Judy Herndon, LexisNexis
Trena Heikes, DOL
William Walters, DOL

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

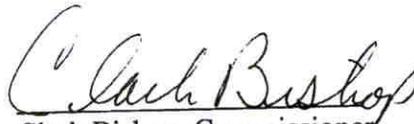
The attached 3 pages of regulations, dealing with workers' compensation, are adopted and certified to be a correct copy of the regulation changes that the Alaska Workers' Compensation Board approved, and the Alaska Department of Labor and Workforce Development adopts, under the authority of AS 23.30.005; and AS 44.31.020 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 Alaska Department of Labor and Workforce Development and Alaska Workers' Compensation Board 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: 8/27/2009
Anchorage, 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 29, 2009, at 8:35am., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor Craig E. Campbell

Effective: October 29, 2009.

Register: 192, January 2010.

ORDER CERTIFYING THE CHANGES TO REGULATIONS OF
THE ALASKA WORKERS' COMPENSATION BOARD

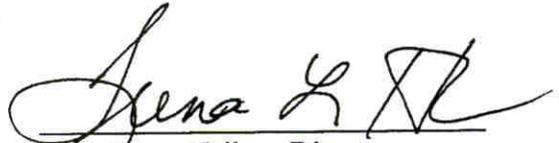
The attached three (3) pages of regulations, dealing with workers' compensation, including provisions regarding Alaska Workers Compensation Board code of conduct, are hereby certified to be a correct copy of the regulation changes that the Alaska Workers' Compensation Board approved at its July 21-22, 2009 meeting, and the Alaska Department of Labor and Workforce Development adopted, under the authority of AS 23.30.005 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.

On the record, in considering public comments, the Alaska Workers' Compensation Board paid special attention to the cost to private persons of the regulatory action being taken.

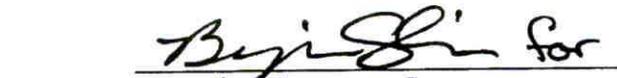
The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE: August 25, 2009
Anchorage, Alaska


Trena Heikes, Director
Division of Workers' Compensation

FILING CERTIFICATION

Benjamin P. Shier for
I, Craig E. Campbell, Lieutenant Governor for the State of Alaska, certify that
on September 29, 2009 at 8:35 a.m., I filed the attached regulations according
to the provisions of AS 44.62.040 - 44.62.120.


Craig E. Campbell, Lieutenant Governor

Effective: October 29, 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.




.....
**CRAIG E. CAMPBELL
LIEUTENANT GOVERNOR**

8 AAC 45 is amended by adding new sections to read:

8 AAC 45.105. Alaska Workers' Compensation Board code of conduct. (a) Nothing in this section relieves ^(Lg) Board members' of their ^(the provisions of) duty to comply with AS 39.52.010 - 39.52.960 ^(Lg) the (Alaska Executive Branch Ethics Act) and the ethics regulations at 9 AAC 52.010 - 9 AAC 52.990. ^(Lg) Each board member holds office as a public trust, and any effort to benefit from a personal or financial interest through official action is a violation of that trust. ^(Lg) Board members ^(Lg) are drawn from society and cannot and should not be without personal and financial interests in the decisions and policies of government. ^(An individual) A person who serves as a board member retains rights to interests of a personal or financial nature. Standards of ethical conduct for board members ^(Lg) distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.

(b) The provisions of this section do not prevent a board member from following other independent pursuits, if those pursuits do not interfere with the full and faithful discharge of a board member's public duties and responsibilities. ^(under AS 23.30 and this chapter)

(c) The recusal of a board ^(panel) member for conflict of interest ^(Lg) shall only occur ^(under the procedures set out in 8 AAC 45.106 may occur only) if the recusal ^(panel) is based on clear and convincing evidence that the board member

(1) has a conflict of interest that is substantial and material; or

(2) shows actual bias or prejudice.

^(The) of a board panel member ^(under the procedures set out in 8 AAC 45.106 may occur only if the recusal is based on) that the board panel ^(there is) clear and convincing evidence ^(board member has)

(1) ^(has) a personal or financial interest that is substantial and material; or

(2) shows actual bias or prejudice.



(c) Unethical conduct is prohibited, but there is no substantial impropriety or substantial appearance of impropriety if, as to a specific matter, the standards of AS 39.52.110(b) would permit participation.

(Eff. 10/29/09, Register 192)

Authority: AS 23.30.005 AS 44.31.020

8 AAC 45.106. Procedures for ^(board) ~~hearing~~ ^(of interest, impropriety) panel members to avoid conflicts and

appearance of impropriety. (a) Before conducting a hearing on a case, each board panel member shall be given the names of the parties involved in the hearing and any other appropriate information necessary for the board panel member to determine if the individual member, or ^(of interest as described in 8 AAC 45.105) another member, has a conflict.

(b) If a board panel member determines ^(that the member has) ~~there is~~ ^(potential) a conflict of interest, ^(the potential) ~~such~~ ^(of interest must) conflict shall be disclosed to the ^(panel) Board ^(before) Chair ~~prior to~~ the hearing.

(c) Upon notification by a board ^(panel) member of a ^(potential) conflict, ^{(of interest under (b) of this section, the)} ~~the Chair~~ shall request that the ^(board panel chair) board member ^(panel) ~~recuse~~ ^(oneself) ~~them self~~ or refer the matter to the remainder of the board panel to determine if recusal is appropriate.

(d) If before a scheduled hearing begins, a party has knowledge of a potential conflict of interest or knowledge that a board ^(panel) member's circumstances may present ^(a potential impropriety or) an appearance of impropriety, the party may file a petition with the commissioner, or the commissioner's designated hearing officer under AS 23.30.005(b), objecting to the board ^(panel) member's ~~sitting on the~~ ~~panel~~ and briefly outline the reasons. If a petition is filed under this subsection, the commissioner, or the commissioner's designated hearing officer, shall forward ^(the) this objection to the board panel member ^(who is the) ~~subject to~~ ^(of) the petition for ^(the) ~~that~~ member's review. If the board panel

Register ²⁰¹⁰ ~~192 Jan 2007~~ LABOR AND WORKFORCE DEV.

member does not recuse ^(oneself) ~~himself~~ from the proceeding, the remaining board panel members ^(shall) ~~will~~
determine whether the board panel member ^(who is the) ~~subject to~~ ^(of) the petition may hear the case. (Eff.

10/29/09, Register 192)

Authority: AS 23.30.005 AS 44.31.020

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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 
Special Assistant
907.465.4081

DATE: November 16, 2009

RE: Filed Permanent Regulations: Workers' Compensation Board
Guardianship; Employee Status: 8 AAC 45.190; 8 AAC 45.890

Attorney General File: JU2009200495 (Part 1)
Regulation Filed: 11/13/2009
Effective Date: 12/13/2009
Print: 192, January 2010

cc with enclosures: Linda Miller, Department of Law
Jim Pound, Administrative Regulation Review Committee
Judy Herndon, LexisNexis
Trena Heikes, DOL
Jeremy W. Dodson, DOL

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

The attached 2 pages of regulations, dealing with workers' compensation including provisions regarding guardianship of a minor or mentally incompetent beneficiary and employee status, are adopted and certified to be a correct copy of the regulation changes that the Alaska Department of Labor and Workforce Development adopts under the authority of AS 23.20.005 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: November 2, 2009
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 November 13, 2009, at 4:05 pm., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor Craig E. Campbell

Effective: December 13, 2009

Register: 192, January 2010

ORDER CERTIFYING THE CHANGES TO REGULATIONS OF
THE ALASKA WORKERS' COMPENSATION BOARD

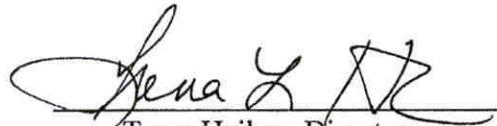
The attached 2 pages of regulations, dealing with workers' compensation, including provisions regarding guardianship of a minor or mentally incompetent beneficiary and determining employee status are hereby certified to be a correct copy of the regulation changes that the Alaska Workers' Compensation Board adopted at its July 21-22, 2009 meeting, under the authority of AS 23.30.005 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.

On the record, although no public comments were received, the Alaska Workers' Compensation Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in 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: 11/2/09
Anchorage, Alaska


Trena Heikes, Director
Division of Workers' Compensation

Benjamin P. Sher for FILING CERTIFICATION

I, Craig E. Campbell, Lieutenant Governor for the State of Alaska, certify that on

November 13, 2009 at 4:10 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.


Lieutenant Governor Craig E. Campbell

Effective: December 13, 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.



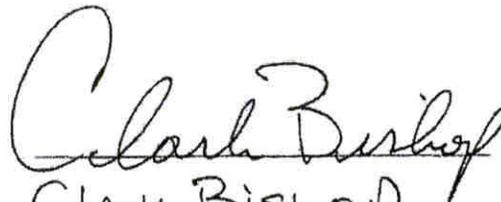

.....
**CRAIG E. CAMPBELL
LIEUTENANT GOVERNOR**

STATE OF ALASKA
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
P.O. BOX 111149
JUNEAU, AK 99811

DELEGATION OF AUTHORITY

IN ACCORDANCE WITH AS 44.17.010, THE AUTHORITY AND RESPONSIBILITY FOR ADOPTING REGULATIONS OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT UNDER THE ALASKA ADMINISTRATIVE PROCEDURE ACT IS HEREBY DELEGATED TO GUY BELL, ASSISTANT COMMISSIONER.

SIGNED:


Clark Bishop
(Please print name)

SIGNED AND SWORN TO before me this 12 day of August, 2008.

[NOTARY SEAL]


Notary Public in and for the
State of Alaska
My commission expires: with office

**Chapter 45. Compensation, Medical Benefits, and Proceedings Before the Alaska
Workers' Compensation Board.**

8 AAC 45.190 is amended to read:

8 AAC 45.190. Guardianship. (a) In death cases where there are minor or mentally incompetent beneficiaries and the amount of compensation to be paid in a lump sum to the beneficiary does not exceed **\$10,000** [\$5,000], the **director may** [BOARD WILL, IN ITS DISCRETION,] order compensation to be paid in a lump sum on behalf of the beneficiary directly to the natural guardian of the beneficiary if the board finds that payment of compensation to the natural guardian is in the best interest of the beneficiary.

(b) In each case where there is a minor or mentally incompetent beneficiary and the amount to be paid in a lump sum to the beneficiary exceeds or potentially exceeds **\$10,000** [\$5,000], the **director** [BOARD] will require the appointment of a guardian or conservator to represent the interests of the beneficiary and to receive payments in trust for the beneficiary.

(c) The employer shall pay **compensation** [BENEFITS] under (b) of this section into an interest-bearing account at a federally insured commercial bank or lending institution until the conservator or guardian is appointed.

8 AAC 45.190 is amended by adding a new subsection to read:

(d) In this section, "director" means the director of the division of workers' compensation in the department. (Eff. 5/28/83, Register 86; am 12 / 13 / 2009, Register 192)

Authority: AS 23.30.005 **AS 23.30.140** **AS 44.31.020**

The lead-in language of 8 AAC 45.890 is amended to read:

8 AAC 45.890. Determining employee status. For purposes of AS 23.30.395(19) [AS 23.30.265(12)] and this chapter, the board will determine whether a person is an “employee” based on the relative-nature-of-the-work test. The test will include a determination under (1) – (6) of this section. **Paragraphs** [PARAGRAPH] (1) **and (2)** of this section **are** [IS] the most important **factors** [FACTOR AND IS INTERDEPENDENT WITH (2) OF THIS SECTION], and at least one of these **two** factors must be resolved in favor of an “employee” status for the board to find that a person is an employee. The board will consider whether the work

...

(Eff. 3/16/90, Register 113; am 12/13/2009, Register 192)

Authority: AS 23.30.005 [AS 23.30.265] AS 44.31.020
[AS 23.30.005(h)] AS 23.30.395

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OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA

MEMORANDUM

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

FROM: Benjamin Shier 
Special Assistant
907.465.4081

DATE: February 1, 2010

RE: Filed Permanent Regulations: Department of Labor & Workforce Development
Workers' Compensation, Second Independent Medical Examinations (SIMEs), Civil Penalties, Subpoenas, and the Workers' Compensation Benefits Guaranty Fund: 8 AAC 45.092(h); .175 - .177

Attorney General File:	JU2009200587
Regulation Filed:	1/29/2010
Effective Date:	2/28/2010
Print:	193, April 2010

cc with enclosures:

Linda Miller, Department of Law
Jim Pound, Administrative Regulation Review Committee
Judy Herndon, LexisNexis
Trena L. Heikes, DOL
Jeremy W. Dodson, DOL

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

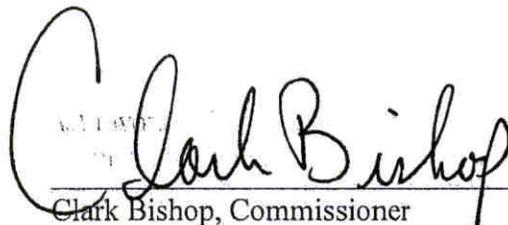
The attached 8 pages of regulations, dealing with workers' compensation including provisions regarding Second Independent Medical Evaluations, issuance of subpoenas, assessment of civil penalties claims against the workers' compensation benefit guaranty fund, and changes to definitions are adopted and certified to be a correct copy of the regulation changes that the Alaska Department of Labor and Workforce Development adopts under the authority of AS23.30.005 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 Alaska 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: 1-19-10
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 January 29, 2010, at 2:05 pm., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Lieutenant Governor Craig E. Campbell

Effective: February 28, 2010

Register: 193, April 2010.

ORDER CERTIFYING THE CHANGES TO REGULATIONS OF
THE ALASKA WORKERS' COMPENSATION BOARD

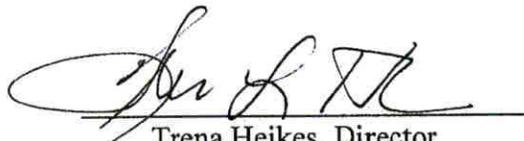
The attached 8 pages of regulations, dealing with workers' compensation, including provisions regarding Second Independent Medical Evaluations, issuance of subpoena, assessment of civil penalties, claims against the workers compensation benefit guaranty fund, and changes to definitions are hereby certified to be a correct copy of the regulation changes that the Alaska Workers' Compensation Board adopted at its July 21-22, 2009 meeting, under the authority of AS 23.30.005 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.

On the record, in considering public comments, the Alaska Workers' Compensation Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in 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: 12/21/09
Anchorage, Alaska


Trena Heikes, Director
Division of Workers' Compensation

Benjamin P. Shier for FILING CERTIFICATION

I, Craig E. Campbell, Lieutenant Governor for the State of Alaska, certify that on

January 29, 2010 at 2:05 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.


Lieutenant Governor Craig E. Campbell

Effective: February 28, 2010

Register: 193, April 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.




.....
**CRAIG E. CAMPBELL
LIEUTENANT GOVERNOR**

**Chapter 45. Compensation, Medical
Benefits, and Proceedings
Before the Alaska
Workers' Compensation Board.**

8 AAC 45.092(h) is amended by adding a new paragraph to read:

(5) that, within 10 days ^{after} ~~of~~ a party's filing of verification that the binders are complete, each party may submit to the board designee up to three questions per medical issue in dispute under AS 23.30.095(k), as identified by the parties, the board designee, or the board, as follows:

(A) if all parties are represented by counsel, the board designee shall submit to the physician all questions submitted by the parties in addition to and at the same time as the questions developed by the board designee;

(B) if any party is not represented by counsel, only questions developed by the board designee ^{shall} ~~will~~ be submitted to the physician; however, the board designee may consider and include questions submitted by the parties;

(C) if any party objects to any questions submitted to the physician, that party shall file a petition with the board and serve all other parties within 10 days ~~of~~ ^{after} receipt of the questions; the objection must be preserved in the record for consideration by the board at a hearing on the merits of the claim, or, upon the petition of any party objecting to the questions, at the next available procedural hearing day; failure by a party

to file and serve an objection does not result in waiver of that party's right to later argue the questions were improper, inadequate, or otherwise ineffective;

(D) any questions submitted for purposes of this paragraph must be prepared in accordance with 8 AAC 45.114(3) and (4). (Eff. 7/1/88, Register 107; am 10/28/88, Register 108; am 3/16/90, Register 113; am 7/20/97, Register 143; am 7/2/98, Register 146; am 2/27/2000, Register 153; am 3/13/2004, Register 169; am 2 / 28 / 2010, Register 193)

Authority: AS 23.30.005

AS 23.30.095

AS 23.30.110

bold

Upon request by the division, the board or its designee will issue subpoenas, including subpoenas duces tecum, if

8 AAC 45 is amended by adding new sections to read:

Failure to insure;

8 AAC 45.175.

Assuance of subpoena.

When an employer is under investigation for

and the

failure to insure for workers' compensation liability, ~~subpoenas, including subpoenas duces~~

~~tecum, shall be issued by the board or its designee, upon request by the division, when an~~

after the demands

employer fails to comply with discovery demands within ~~thirty (30)~~ days. Failure to comply

or its designee

with a subpoena issued by the board will result in certification of the facts to the Superior Court

to ~~effectuate~~ enforcement of the subpoena. (Eff. 2 / 28 / 2010, Register 193)

Authority: AS 23.30.005

AS 23.30.080

Failure to provide security;

the board finds

8 AAC 45.176.

Assessment of civil penalties.

(a) If an employer ~~is found by the board~~

to have failed to provide security as required by AS 23.30.075, the employer is subject to a civil

penalty under AS 23.30.080(f), determined as follows:

(1) if an employer has an inadvertent lapse in coverage, the civil penalty assessed under AS 23.30.080(f) for the employer's violation of AS 23.30.075 may be no more than the prorated premium the employer would have paid had the employer been in compliance with AS 23.30.075; the division shall consider a lapse in coverage of not more than 30 days to be inadvertent if the employer has changed carriers, ~~there has been a change in~~ ownership of the has changed employer, ~~there has been a change in~~ the form of business entity of employer, ~~there has been a~~ the has changed ~~change in~~ the individual responsible for obtaining workers' compensation coverage for the has changed employer, or ~~there is~~ the board determines an unusual extenuating circumstance ~~deemed by the board~~ and is found not to have to qualify as an inadvertent lapse;

(2) if an employer has not previously violated AS 23.30.075, ~~has no~~ is found to have aggravating factors, and agrees to a stipulation of facts and executes a confession of judgment without action, without a board hearing, the employer will be assessed a civil penalty of two times the premium the employer would have paid had the employer complied with AS 23.30.075;

(3) if an employer has not previously violated AS 23.30.075, and ~~has~~ is found to have no more than three aggravating factors, the employer will be assessed a civil penalty of no less than \$10 and no more than \$50 per uninsured employee work day; ~~at no time may~~ however, the civil penalty ~~be less~~ may not than two times the premium the employer would have paid ~~if~~ had the employer ~~had~~ complied with AS 23.30.075; without a board hearing, if an employer agrees to a stipulation of facts and executes a confession of judgment without action, the employer ~~is entitled to~~ will be given a 25 percent discount of the assessed civil penalty; however, the discounted amount may not be less than any civil penalty that would be assessed under (2) of this subsection;

(4) if an employer is found to have no more than six aggravating factors, the employer will be assessed a civil penalty of no less than \$51 and no more than \$499 per uninsured employee workday; ~~at no time may~~ ^{however,} the civil penalty ^{may not} be less than two times the premium the employer would have paid ^{had} ~~if~~ the employer ~~had~~ complied with AS 23.30.075; without a board hearing, if an employer agrees to a stipulation of facts and executes a confession of judgment without action, the employer ^{will be given} ~~is entitled to~~ a 25 percent discount of the assessed civil penalty; however, the discounted amount may not be less than any civil penalty that would be assessed under (3) of this subsection;

(5) if an employer is found to have no fewer than seven and no more than 10 aggravating factors, the employer will be assessed a civil penalty of no less than \$500 and no more than \$999 per uninsured employee workday; ~~at no time may~~ ^{however,} the civil penalty ^{may not} ~~assessed~~ be less than four times the premium the employer would have paid had the employer complied with AS 23.30.075; without a board hearing, if an employer agrees to a stipulation of facts and executes a confession of judgment without action, the employer ^{will be given} ~~is entitled to~~ a 25 percent ^{assessed} discount of the civil penalty; however, the discounted amount may not be less than any civil penalty that would be assessed under (4) of this subsection; ~~or~~

(6) if an employer is found to have more than 10 aggravating factors, the employer will be assessed a civil penalty of \$1,000 per uninsured employee workday.

(b) A civil penalty assessed under (a) of this section may not exceed the maximum civil penalty allowed under AS 23.30.080(f).

(c) An employer receiving government funding of any form to obtain workers' compensation coverage under AS 23.30.075 that fails to provide that coverage may be ^{assessed} ~~fined~~ the maximum civil penalty under AS 23.30.080(f).

(d) For the purposes of this section, "aggravating factors" include

(1) failure to obtain workers' compensation insurance within 10 days ^{after} ~~of~~ the division's notification of a lack of workers' compensation insurance;

(2) failure to maintain workers' compensation insurance after previous notification by the division of a lack of coverage;

align (3) a violation of AS 23.30.075 that exceeds 180 calendar days;

(4) previous violations of AS 23.30.075;

(5) issuance of a ~~valid~~ stop order by the board under AS 23.30.080(d), or the director under AS 23.30.080(e);

(6) violation of a ~~valid~~ stop order issued by the board under AS 23.30.080(d), or the director under AS 23.30.080(e);

(7) failure to comply with the division's initial discovery demand within 30 days; ^{after the demand}

(8) failure to pay a penalty previously assessed by the board for violations of AS 23.30.075;

(9) failure to provide compensation or benefits payable under the Act to an uninsured injured employee;

(10) a history of injuries or deaths sustained by ^{one} ~~an~~ ^{more} ~~employee~~ or employees while employer was in violation of AS 23.30.075;

(11) a history of injuries or deaths while the employer was insured under AS 23.30.075;

(12) failure to appear at a hearing before the board after receiving proper notice under AS 23.30.110;

(13) cancellation of a workers' compensation insurance policy due to the employer's failure to comply with the carrier's requests or procedures;

(14) lapses in business practice that would be used by a reasonably diligent business person, including

(A) ignoring certified mail;

(B) failure to properly supervise employees; and

(C) failure to gain a familiarity with laws affecting the use of employee

labor;

(15) receipt of government funding of any form to obtain workers' compensation coverage under pursuant to AS 23.30.075, and failure to provide that coverage. (Eff. 2 / 28 / 2010)

Register 193)

Authority: AS 23.30.005

AS 23.30.080

↑
Move circled text from page 8 here, as new subsec. (e).

8 AAC 45.177. Claims against the workers' compensation benefits guaranty fund.

(a) Upon receipt of a report of occupational injury or illness involving an injury to an employee employed by an employer who appeared to be uninsured at the time of the injury, the division shall immediately notify the division's Special Investigations section and the administrator of the workers' compensation benefits guaranty fund (Fund) in the division's Juneau office.

(b) The division shall send a letter to the parties advising the parties that the employer may not have had workers' compensation insurance in effect at the time of the employee's

^{In} injury. ^{to the division shall} The letter ~~will~~ also advise the parties of the rights and remedies available to the injured worker under the Act if the employer was not insured.

(c) A workers' compensation claim shall be filed against the fund within the same time and in the same manner as a claim filed against the employer in accordance with AS 23.30.105, AS 23.30.110, and 8 AAC 45.050. The division shall serve the claim upon the fund's administrator and advise the parties that copies of all future documents filed with the division are also to be served upon the fund's administrator.

(d) The fund is subject to the same claim procedures under the Act as all other parties.

(e) The fund may not be obligated to pay the injured worker's claim unless the

(1) employee and employer stipulate to the facts of the case, including that the employee's claim is compensable, which has the effect of an order under 8 AAC 45.050(f), or the board issues a determination and award of compensation; and

(2) the employer defaults upon the payment of compensation for a period of 30 days after the compensation is due.

(f) In case of default by the employer in the payment of compensation due under an award and payment of the awarded compensation by the fund, the board shall issue a supplementary order of default. The fund shall be subrogated to all the rights of the employee and may pursue collection of the defaulted payments under AS 23.30.170. ^v(Eff.

2 / 28 / 2010, Register 193)

Authority: AS 23.30.005

AS 23.30.080

AS 23.30.082

7(g) In this section, "fund" means the workers' compensation benefits guaranty fund (AS 23.30.082(a)).

~~8 AAC 45.900(a) is amended by adding new paragraphs to read:~~

~~8 AAC 45.900. Definitions. (a) In this chapter,~~

~~***~~

~~(15) "aggravating factors" means acts or omissions by the employer that the board will consider in the board's assessment of a civil penalty under AS 23.30.080(f) and~~

~~8 AAC 45.176;~~ *Move circled text, as edited, to spot marked on page 6.*

~~4(e) In this section,~~

~~(1) (16) "premium" means the current amount charged to the employer by a carrier for coverage under AS 23.30.075;~~

~~(2) (17) "uninsured employee workday" means the total hours of employee labor utilized by the employer while in violation of AS 23.30.075 divided by ~~8~~ eight.~~

~~(Eff 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107; am 3/16/90,~~

~~Register 113; am 7/20/97, Register 143; am 7/2/98, Register 146; am _____/_____/_____~~

~~Register _____)~~

~~Authority: AS 23.30.005 AS 23.30.090 AS 23.30.230~~

~~AS 23.30.030 AS 23.30.175 AS 23.30.240~~

~~AS 23.30.041 AS 23.30.220 AS 23.30.265~~