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<p><b>Department of Labor and Workforce Development</b></p>	<p align="center"><b>BULLETIN</b></p>	<p align="center"><b>Number</b> 22-04</p>	<p align="center"><b>Date</b> April 1, 2022</p>
<p align="center">Dr. Tamika L. Ledbetter Commissioner</p>	<p><b>SUBJECT</b></p> <p><b>REFERENCE</b></p>	<p>Cost-of-Living Adjustments AS 23.30.175 8 AAC 45.138</p>	

This bulletin is being issued as a result of the Alaska Supreme Court’s Decision in *Roberge v. ASRC Construction Holding Co.* (Slip Op. S-17897), issued February 4, 2022. This Decision supersedes guidance that was previously provided in Bulletin 19-09, regarding when a Cost-of-Living Adjustment (COLA) rate should be applied during the calculation of a recipient’s weekly compensation rate.

Under AS 23.30.175(a), “The weekly rate of compensation for disability or death may not exceed the maximum compensation rate”. Past procedures dictated that COLA should be applied to a recipient’s weekly compensation rate after the maximum cap had been applied. *Roberge* reversed this procedure, and requires that the COLA factor be applied first, then capping the resultant compensation rate at the maximum compensation rate for Alaska established through Alaska Statute 23.30.175(a) (120% of the average weekly wage in Alaska).

The Division and the Alaska Workers’ Compensation Board do not provide advisory opinions. The question of *Roberge*’s prospectivity (going forward) or retroactivity, and the type of prospectivity or retroactivity, may be addressed in the context of a case in which the question is essential to the decision. In the meantime, past Alaska Supreme Court opinions should serve as a basis for an informed decision by any interested parties. *See Metcalf v. Felec Servs.*, 784 P.2d 1386 (Alaska 1990); *Morrison v. Afognak Logging, Inc.*, 768 P.2d 1139 (Alaska 1989); *Vienna v. Scott Wetzel Servs., Inc.*, 740 P.2d 447 (Alaska 1987); and *Suh v. Pingo Corp.*, 736 P.2d 342 (Alaska 1987).