

ALASKA STATE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY
Personnel Office

120 W 4th Street
Juneau, AK 99801-1182
907-465-3854/ Fax 465-6557
PersonnelGroup@akleg.gov

CONFIDENTIAL MEMORANDUM

To: Representative Bryce Edgmon
Speaker of the House

From: Skiff Lobaugh
Human Resource Manager 

Date: December 20, 2017

Subject: Investigative Report for Representative Westlake.

Investigation Introduction:

On December 5, 2017, I received information in the form of a KTVA News report regarding an legislative employee who had knowledge of potential violation(s) of the Legislative Council Policy on Sexual and Other Workplace Harassment committed by Representative Dean Westlake. The news report contained a letter dated March 13, 2017 from a legislative employee to Representative Edgmon an Representative Tuck describing two alleged incidents. Later that day I received an email request by Representative Edgmon and Representative Tuck asking that I investigate the allegations in the letter. When reviewing the KTVA News report I noticed there was a quote from Representative Tuck stating that they had dealt with the allegations, so my first course of action was to determine what had already been done and what information had already been gathered. Generally, in an investigation, my first course of action is to interview the complainant, however, since there was uncertainty if there had already been actions taken my first contact was with Representative Tuck's office. During the investigation I was approached by two more individuals with allegations against Representative Westlake. While conducting interviews with witnesses, I found another employee who had an alleged incident occur to her by Representative Westlake, but would not file a complaint or talk to me regarding the alleged incident.

On December 9, 2017, the Anchorage Daily News (AND) published a report that seven legislative staff members had reported unwanted advances or comments made to them by Representative Westlake. From all the allegations I was able to gather, I saw a pattern of actions that may be pervasive and that needed to be investigated. Where one instance of an inappropriate comment or action may not meet the definition of hostile work environment sexual harassment, if there is a pattern of multiple comments or actions then the cumulative effect may pose a violation of the Legislature's harassment policy.

Materials List:

Materials that were reviewed and considered during the investigation include, but are not limited to:

1. *U.S Equal Employment Opportunity Commission, Enforcement Guidance, Vicarious Employer Liability for Unlawful Harassment by Supervisors*, modified March 29, 2010.

2. KTVA Broadcast by Liz Raines on Thursday, December 4, 2017, <http://www.ktva.com/story/36984173/rural-rep-dean-westlake-accused-of-sexual-misconduct>
3. *Seven aides at Alaska Capitol say legislator made unwanted advances and comments*, Anchorage Daily News article Posted December 9, 2017.
4. ***Legislative Council Policy on Sexual and Other Workplace Harassment***

Allegations:

There are four specific allegations from three different complainants that I have received regarding Representative Westlake's actions. Though there are reports of seven woman, I only had three complainants, the others either did not contact me or would not discuss their allegations with me. The first two allegations came from C1 and were outlined in the letter dated March 13, 2017. The four incidents I investigated to see if they violated of the Legislative Council's Policy on Sexual and Other Workplace Harassment were:

1. January 16, 2017 at the Juneau-Douglas City Museum, Representative Westlake walked up, grabbed C1, and made a comment about her hair turning him on. C1 addressed this situation in a letter dated March 13, 2017.
2. March 11, 2017 at a downtown art studio called Canvas where Representative Westlake allegedly grabbed C1's behind when walking by her. C1 addressed this situation in a letter dated March 13, 2017.
3. During the April 18, 2017 House Community and Regional Affairs Committee meeting, Representative Westlake passed a note to another legislator stating that his staff (C2) looked really good in her dress. Later that day Representative Westlake approached C2 member and told her directly how she looked good in her dress.
4. During the June special session, a house employee (C3) was delivering per diem checks to Representative Westlake and another legislator in the while they were in the fire escape. When she gave Representative Westlake his per diem check, Representative Westlake he said something along the lines of "how are we supposed to get any work done around here with employees who look like that". C3 felt this exchange was inappropriate and made her feel very uncomfortable.

Witnesses and Interviews:

Through the course of this investigation I received several unsolicited calls from staff as well as names of other witnesses. From this information I was able to put together a list of witnesses whom I either interviewed or received written accounts from. They are:

- Complainant 1 (C1): Incident on January 15, 2017 at the Juneau-Douglas City Museum and the Incident on March 11, 2017 at the art studio Canvas.
- Complainant 2 (C2): April 18, 2017 incident regarding passing notes in the committee meeting and inappropriate comments made on the second floor Capitol.
- Complainant 3 (C3): June incident on the fire escape of the Capitol.
- Legislator 1 (Leg1): Named as witness for allegation 4 regarding inappropriate statements made on the outside fire escape of the Capitol.
- House Staff Employee 1 (HSE1): Knowledge of receipt of March 13 letter outlining allegations 1 and 2, and actions taken. Was also named as a witness.
- House Staff Employee 2 (HSE2): Named as witness to allegations 1 and 2 described in the March 13, 2017 letter.
- House Staff Employee 3 (HSE3): Named as witness to allegation 3 regarding inappropriate

actions and comments in the committee room and second floor Capitol.

- House Staff Employee 4 (HSE4): Named as witness to allegation 3 regarding inappropriate actions and comments in the committee room and second floor Capitol.

Evidence from Interviews and Witness Statements

Allegation 1: January 16, 2017 at the Juneau-Douglas City Museum, Representative Westlake walked up, grabbed C1 and made a comment about her hair turning him on. C1 addressed this situation in a letter dated March 13, 2017.

Allegation 1 is substantiated even though it occurred before Representative Westlake was sworn into office and he was not considered an employee of the Legislature. However, this allegation is reviewable by the legislature and can be included in this report because C1 was a legislative employee on that date. This allegation had two aspects to it, first was that he “grabbed” her and the other was that he said that her hair “turned him on”. Where the statement regarding her hair was not verified by witnesses, the “grab” or “hug” was substantiated. Representative Westlake said he “wouldn’t have been surprised if I hugged her”, and he stated he was a hugger. The difference between a hug and a grab can be a matter of opinion between the participants.

Allegation 2: March 11, 2017 at a downtown art studio called Canvas where Representative Westlake allegedly grabbed C1’s behind when walking by her. C1 addressed this situation in a letter dated March 13, 2017.

Allegation 2 is substantiated. This allegation Representative Westlake, C1, HSE2 and HSE3 all said there was physical contact. C1 stated that she was grabbed on the butt. HSE2 and HSE 3, who were witnesses to the event, stated that Representative Westlake went to hug C1 and she turned so he ended up with a hand on her lower back. Once again Representative Westlake said he would not be surprised if he hugged her. The difference between the lower back and the butt is a matter of perception and therefore this allegation is substantiated. On March 21, 2017, Representative Edgmon counseled Representative Westlake letting him know his actions were inappropriate and that they would not be tolerated. After that meeting there were no more incidents with C1.

Allegation 3: During the April 18, 2017 House Community and Regional Affairs Committee meeting, Representative Westlake passed a note to another legislator stating that his staff (C2) looked really good in her dress. Later that day Representative Westlake approached C2 and told her directly how she looked good in her dress.

Allegation 3 is substantiated. Representative Westlake stated that he genuinely felt that the C2 looked good in the dress and was trying to pay her a compliment. C2 also told this event to HSE3 and HSE4 whom both recounted the same course of events as C2. Alone this allegation would not fit the definition of hostile work environment sexual harassment.

Allegation 4:

During the June special session, a house employee (C3) was delivering per diem checks to Representative Westlake and Leg1 in the while they were in the fire escape. When she gave

Representative Westlake his per diem check he said something along the lines of “how are we supposed to get any work done around here with employees who look like that”. C3 felt this exchange was inappropriate and made her feel very uncomfortable.

Allegation 4 is substantiated. Representative Westlake stated he would not use a phrase like “how are we to get any work done around here when staff look like that”. He did admit he is a big flirt and my have said something. Leg1 who was a witness stated that he does not remember this specific interaction, but he would not doubt that it happened. The allegation was substantiated because Representative Westlake and Leg1 both stated they do not doubt that the event happened. Again, alone this allegation would not fit the definition of hostile work environment sexual harassment.

Findings:

The U.S. Equal Employment Opportunity Commission (EEOC) defines harassment as “...unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.” EEOC further states that “petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.” (See <https://www.eeoc.gov/laws/types/harassment.cfm>)

Sexual harassment has been defined in employment law in two ways. The first type is called quid pro quo. The quid pro quo form of harassment is when an individual’s submission to or rejection of sexual advances or conduct of a sexual nature is used as the basis for an employment decision, or if an individual’s submission to such conduct is made a term or condition of employment. The second type of harassment is called hostile work environment. This occurs when unwelcome sexual conduct unreasonably interferes with an individual’s job performance or creates a hostile, intimidating, or offensive work environment. Though there is not a hard and fast test for hostile work environment sexual harassment, the EEOC recommends that human resource professionals follow the standards set by the U.S. Supreme Court in *Harris v. Forklift Systems*, 510 U.S. 17, (1993).

In *Harris v. Forklift Systems*, the court stated the employer should take into consideration: 1) the frequency of the discriminatory conduct, 2) the severity (is it discretionary or merely inappropriate), 3) if the conduct unreasonably interferes with an employee’s ability to perform their job, and 4) how the conduct affects the employee’s well-being.

The event was clearly not quid pro quo harassment, so I analyzed it as a potential hostile work environment sexual harassment claim by using the four factors set forth in the *Harris v. Forklift Systems* case. Those factors are as follows:

1. Frequency: The inappropriate actions and comments have been shown to be pervasive. When I asked Representative Westlake about the other woman named in the news article he stated that he was a hugger and he did flirt but he did not mean any offense by his actions. He did

not specifically confirm or deny those other events.

2. Severity: The two touch events together would be considered severe since they involved intentional unwanted touch. The inappropriate comment themselves would not be considered severe.
3. Interferes with employee's ability to do their job: Most of the complainants did not need to interact with Representative Westlake on a regular basis. However, C2 was a committee aide for a committee that Representative Westlake sat on and these situations could make her uncomfortable when performing her committee aide job duties.
4. Affects employee's well-being: None of the complainants stated it effected their well-being other than they were careful not to be around Representative Westlake so they would not be put in this type of situation in the future.

It is very important to understand that two people will see events differently. It is in the eye of the complainant that the investigation must view the course of events. Several times when interviewing witnesses they would say adamantly that a specific word was not used or the type of touch was not correct. However, in each situation they did admit that words used could have been interpreted differently. The same logic is applicable for the touch allegations. What one person may call a simple hug another can consider it a lingering hug or even a grab. It is important not to assume because one individual may define a course of events one way, another cannot see things through a different life experience.

Conclusions:

In conclusion, the cumulative effect of Representative Westlake's actions and comments created a hostile work environment sexual harassment. This determination is based on the standards set in the Supreme Court decision of *Harris v. Forklift Systems*. This finding is further supported by the number of substantiated incidents. In the US Supreme Court Case *National R. R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), they stated that hostile work environment sexual harassment claims are "based on the cumulative effect of individual acts."

Note: Representative Westlake submitted his letter of resignation while I was in the course of this investigation.