

# LEGAL SERVICES

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## MEMORANDUM

April 12, 2018

**SUBJECT:** Sexual and Other Workplace Harassment Policy: Interns  
(Work Order No. 30-LS1366)

**TO:** Representative Matt Claman  
Attn: Lizzie Kubitz

**FROM:** Megan A. Wallace  
Legislative Counsel 

It is my understanding that the Subcommittee would like to expressly include interns in the above-referenced policy update. While I agree that it is in the interest of the legislature to protect interns from harassment, this issue does raise a few legal concerns.

Interns are not legislative employees. Legislative interns are subject to certain ethics provisions,<sup>1</sup> but are specifically excluded from the definition of "legislative employee."<sup>2</sup> Because legislative interns are not employees, interns are not protected by the unlawful employment practice provisions under AS 18.80.220(a)(1).<sup>3</sup> While the legislature may prohibit by policy harassment of interns, unless there is a substantive law change to classify interns as employees for harassment or discrimination purposes, legal remedies for harassment are not available to interns.<sup>4</sup> Accordingly, the legislature should exercise caution before creating employment rights for interns that do not otherwise exist.

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<sup>1</sup> AS 24.60.112.

<sup>2</sup> AS 24.60.990(11) ("legislative employee' does not include legislative interns.").

<sup>3</sup> See also *O'Connor v. Davis*, 126 F.3d 112 (2nd Cir. 1997) (holding that the plaintiff, an intern, was not an employee and that remedies were not available to the plaintiff under Title VII or Title IX); see also *Evans v. Washington Ctr. for Internships & Acad. Seminars*, 587 F. Supp. 2d 148 (D.D.C. 2008) (holding that an intern was not an "employee" within meaning of District of Columbia Human Rights Act).

<sup>4</sup> A retaliation claim, for example, requires that the person show that they have been subjected to an "adverse employment action." An intern, who is not an employee, can not be subject to an "adverse employment action."

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The most recent draft of the Sexual and Other Workplace Harassment Policy does not preclude interns from filing a harassment complaint.<sup>5</sup> Therefore, in my opinion, a specific reference to interns is not necessary. In addition, interns would be included in the provision that provides that "[a] person who is not employed by the Legislature who is found to be in violation of this policy may be subject to action, up to and including permanent or temporary removal from legislative buildings."

Furthermore, the current draft of the policy begins by stating that "[i]t is the policy of the Alaska State Legislature to maintain a workplace that is free of all *illegal* discrimination. The Legislature *as an employer* will not tolerate, condone, or permit sexual harassment or harassment on the basis of race, religion, color, national origin, age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood." These statements are inconsistent with the notion of protecting non-employees from discrimination.

The inclusion of interns is a policy decision. I am not sure the Subcommittee's desire regarding the extent that interns are to be included or mentioned in the draft of the Sexual and Other Workplace Harassment Policy.<sup>6</sup> For this reason, I ask that you provide some conceptual language or other guidance that can be used to draft language and be added into the draft policy.

If you have any questions, or if I can be of further assistance, please advise.

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<sup>5</sup> The policy, for example, more generally states that "the subject of alleged harassment" may make an informal or formal report of harassment.

<sup>6</sup> For example, is the Subcommittee looking for a statement or paragraph at the beginning of the policy, noting that interns are protected from discrimination under the policy and may follow the reporting procedures? Alternatively, since the policy does not currently distinguish between "the subject of the alleged harassment," employees, or interns, does the Subcommittee want to add a definition or other language to accomplish this intent?