

# LEGAL SERVICES

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## MEMORANDUM

May 9, 2026

**SUBJECT:** Equal protection  
(CSHB 193(FIN); Work Order No. 34-LS0612\S)

**TO:** Representative Neal Foster  
Co-Chair of the House Finance Committee  
Attn: Brodie Anderson

**FROM:** Allison L. Radford  
Legislative Counsel 

The committee substitute to HB 193 you requested is attached. This bill may raise an issue under the equal protection clause.

The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment. In this version of the bill, seasonal employees and employees of employers with fewer than 25 employees are not eligible for paid parental leave benefits unless their employer opts in. This creates two classes of employees: those who are eligible for the economic benefit of paid parental leave and those who are not.

The Alaska Supreme Court has developed a "flexible sliding scale test" for reviewing equal protection claims.<sup>1</sup> Under the sliding scale test, the court looks to the "nature of the interest" to determine the appropriate level of review.<sup>2</sup> Depending on the level of review, the state may have to show that its objectives were rationally related to a legitimate state interest, at the low-end of the continuum, or, at the high-end of the scale, that the legislation was motivated by a compelling state interest.<sup>3</sup> The court has routinely ruled that the deprivation of an economic interest warrants only "rational basis review," the lowest level of scrutiny under the equal protection test.<sup>4</sup>

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<sup>1</sup> *Ross v. State, Dept. of Revenue*, 292 P.3d 906 (Alaska 2012) (citing *Harrod v. State, Dept. of Revenue*, 255 P.3d 991, 1001 (Alaska 2011)).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Ross*, *supra* (citing *State, Dept. of Revenue, Permanent Fund Dividend Div. v. Cosio*, 858 P.2d 621, 625 (Alaska 1993)).

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The court has expounded on the requirements of the rational basis test. To survive the lowest level of review, the differential treatment of similarly situated people must be designed to "achieve a legitimate governmental objective" and bear a "fair and substantial relationship to the accomplishment of that objective."<sup>5</sup> Ultimately, this level of review does not require that the legislation be "perfectly fair" to every individual to whom it is applied.<sup>6</sup> However, legislation has been struck down under the lowest level of scrutiny because it failed the significant means-to-end fit requirement of Alaska's equal protection clause.<sup>7</sup>

A legislative record detailing the connection between the objective of the bill and the means used to accomplish that objective will help defend the paid parental leave program against a potential equal protection challenge.

Please let me know if you have any questions.

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Attachment

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<sup>5</sup> *Church v. State, Dept. of Revenue*, 973 P.2d 1125, 1130 (Alaska 1999).

<sup>6</sup> *Harrod v. State, Dept. of Revenue*, 255 P.3d 991, 1001 (Alaska 2011).

<sup>7</sup> *See Alaska Civil Liberties Union v. State*, 122 P.3d 781, 790 - 91 (Alaska 2005) (holding that a municipal program denying employment benefits to same-sex domestic partners violated equal protection under the Alaska Constitution when applying the minimum level of scrutiny).