

LEGAL SERVICES

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Updated cover memo for ver. J.

MEMORANDUM

February 20, 2018

SUBJECT: Sexual and Other Workplace Harassment Policy - drafting notes
(Work Order. No. 30-LS1366\J)

TO: Representative Matt Claman
Attn: Lizzie Kubitz

FROM: Megan A. Wallace *MAW*
Legislative Counsel

Attached is the draft policy you requested. The following issues were noted during drafting:

1. The Alaska Human Rights Commission (HRC) does not define "workplace harassment." The sexual harassment definition that is contained in the existing policy comes from the sexual harassment poster made available to the public by HRC. Furthermore, there is no general legal definition for "workplace harassment." For this reason, I have included a statement in the draft policy that a hostile work environment is a violation of AS 18.80.220 and is prohibited under this policy. If that was not your intent, please advise. Alternatively, you would need to provide a definition of each type of unlawful discrimination.¹
2. You asked what "opposed practices" means under the definition of retaliation. The phrase means that if someone objects to or complains about a discriminatory practice under AS 18.80.220 - 18.80.280, the person cannot be retaliated against. I have left in this wording, as it is the legal definition of retaliation under both state and federal law.² If you still wish to revise this language, please advise.
3. You asked about the duty to report for supervisors, which was included in the first draft on page 4, and has been retained under the informal reporting procedure in the attached draft. You also asked about informal anonymous reporting. That portion was also included in the first draft on page 4, and has been retained under the informal reporting procedure in the attached draft.

¹ See, e.g., http://doa.alaska.gov/dop/fileadmin/Equal_Employment/pdf/EEOP_Policy_Statement.pdf (accessed February 17, 2018).

² See AS 18.80.220(a)(4) and 42 U.S.C. § 2000e-3(a).

4. With respect to the Human Resources Manager's ability to retain an independent investigator in cases not involving a legislator, I stated that this may be done where the report or incident involves the Human Resource Manager. If this was contrary to your intent, please advise.
5. With respect to timing of retention of an independent investigator, since the policy already stated that "[a]n investigator shall be assigned within 10 days," I revised the draft to say that the request for an independent investigator must be made within 10 days of the Legislator receiving the report. If this does not work or was contrary to your intent, please advise.
6. I added the requested language about the right of an employee to complain to a manager, supervisor, appointing authority, or the Human Resource Manager about the outcome of a report, but this seemed to conflict with the 5 day deadline to appeal to the appointing authority. For that reason, I stated that the person had the right, notwithstanding the deadline. If this was contrary to your intent, please advise.
7. You did not specify the definition you wanted to use for "appointing authority." Consequently, I used the definition provided in AS 24.60.176,³ which is part of the Legislative Ethics Act. AS 24.60.176 requires the committee's recommendations to be forwarded to the "appointing authority" for a determination on appropriate sanctions. Use of this definition would allow the harassment appeal process to similarly track the ethics process in this regard.⁴ If this was contrary to your intent, please advise.

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Attachment

³ Except that in paragraph 1, I added that the Executive Director is the appointing authority for LAA employees and in paragraph 5, I added "presiding officer, as the presiding officer has some authority over legislative staff during the interim."

⁴ A violation of AS 18.80.220 - 18.80.280 is also an ethics violation, so it would be reasonable for the definitions to be the same or similar.