

ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

Memorandum

Date: February 10, 2023

To: Representative Jesse Sumner, Chair
House Labor & Commerce Committee

From: Representative Josephson

Re: Responses to Monday, January 30, 2023 Hearing

Below are questions raised during the first hearing of HB 13: *Applicability of Human Rights Commission* in House Labor & Commerce Committee:

1. How many complaints does ASCHR take on per year?

In ASCHR's 2022 draft annual report, there were 814 inquiries. 184 of those saw the complainant articulate the basis for a case. 164 of those moved into the formal intake where they underwent a more formal and lengthy interview process. 134 of those went forward to the next stage of the complaint process and allowed ASCHR to move forward with an investigation.

Between the 134 cases that moved forward into the complaint process, there were 12 cases in 2022 considered to contain "Substantial Evidence" meaning that ASCHR determined there was evidence in favor of the complainant. However, those are mostly cases that are still ongoing because respondent did not want to settle.

The more important figure comes from the resolution committees. A resolution committee is administered by ASCHR between the complainant and the respondent, where ASCHR communicates that there is evidence to support the complainant's position and that the respondent could come to a compromise resolution without moving into litigation. 29 cases were

brought to a resolution within this committee. 2 cases from the Substantial Evidence pile were brought to a close, so the total cases that had a legitimate basis AND came to a resolution in the respondent's favor were 31.

2. Why do we need this bill?

Currently, over 44,000 non-profit employees have no statewide commission to pursue a complaint of discrimination against their employer. While some employees may seek inquiry through the EEOC or AERC, these commissions are limited in their coverage (either through the size of the employer or the boundaries of the area).

A recent example of a discrimination complaint is ASCHR v. DENALI FOODS, INC. dba TACO BELL. According to this case, the complainant's general manager subjected her to

unwanted and offensive comments of a sexual nature, inappropriate memes, as well as offensive and sexually explicit images and videos, including a photoshopped image of an employee on a pornographic magazine. [ASCHR No. J-21-098]

If the complainant had been employed by a non-profit, a case like this brought to the state commission would not even make it past the screening phase.

3. Why did the 1963 Alaska Legislature exclude non-profits from the commission's jurisdiction?

Upon initial review, there is no clear record from the Legislative Library to indicate why the definition of employer was chosen as it was. Representative Josephson asked his father, Joe Josephson, this question since Joe Josephson was a state legislator at the time and voted on the bill creating the commission. Joe also did not know why "employer" was defined to exclude non-profits.

4. Why does the EEOC only cover employers with 15 or more employees?¹

The Civil Rights Act of 1964 created a year-to-year reduction in what is considered an employer so that small businesses could have time to adjust and implement the new policies under Title VII. The first year drew the minimum parameters at 100 employees, 75 in the second year, 50 in the third, and 25 in the final reduction year.

¹ This question was answered by Zaakary Barnes, Policy Specialist in Employment, Labor and Retirement Program at NCSL.

25 remained the status quo for the EEOC's definition of employer until 1972 when concerns arose that Title VII was not having the desired effect. An amendment passed the U.S. House of Representatives reducing the definition to 8 or more employees. The U.S. Senate, however, felt this number was too small. Employers who hire family or friends might quickly reach an 8 person threshold, and they might be too small to adequately defend themselves against an EEOC investigation. The compromise was an amendment drawing the minimum number at 15 employees. That number has persisted.

5. What are the similarities and difference between the definitions of “employer” within the three jurisdictional levels (federal, state, municipality)?

On the federal level, the Equal Employment Opportunity Commission defines employer as

The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in a current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers. [42 U.S. Code § 2000e]

On the statewide level, the Alaska State Commission on Human Rights defines employer as

“employer” means a person, including the state and a political subdivision of the state, who has one or more employees in the state but does not include a club that is exclusively social, or a fraternal, charitable, educational, or religious association or corporation, if the club, association, or corporation is not organized for private profit; [AS 18.80.300(5)]

On the municipal level, the Anchorage Equal Rights Commission defines employer as

Employer means a person, public or private, who has one or more employees. [AO 5.20.010]²

² Anchorage municipal code includes a “religious-preference exemption” and a “ministerial exemption” to employer in Chapter 5.20.090. The section reads as follows:

A. Religious-preference exception: It shall be lawful for a bona fide religious or denominational institution, organization, corporation, association, educational institution, or society, to limit, select or give preferential treatment in employment, admissions, accommodations, advantages, facilities, benefits, or services, to persons of the same religion or denomination, that is reasonably calculated to promote the religious principles for which it is established or maintained. Such organizations otherwise remain subject to the other provisions in this title with regard to race, color, sex, sexual orientation, gender identity, national origin, marital status, age, or physical or mental disability.

B. Ministerial exception: This chapter shall not apply with respect to the employment of individuals whose positions would fall within the "ministerial exemption" as described by the United States Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694 (2012).

C. Nothing in this chapter shall be construed to violate any rights to free speech or religious exercise guaranteed by the Constitution of the State of Alaska or the Constitution of the United States.

6. Would HB 13 make the definitions consistent throughout?

HB 13 would not make the definitions consistent throughout. ASCHR and AERC would still define *employer* as someone who employs one or more employees while the EEOC defines employer as a person with 15 or more employees. However, the definitions would be made more closely consistent by allowing ASCHR to cover non-profit corporations/associations the same as the EEOC and the AERC.

7. What is an example of a fraternal organization?

The American Legion of Honor is an example of a fraternal organization.

8. What does it cost to operate ASCHR annually?

The cost to operate ASCHR annually was \$2,187,300 in FY23.

A handwritten signature in cursive script that reads "Andy Josephson".