

SCR

28

*Current legislative policy*  
STATE OF ALASKA  
THE LEGISLATURE

P O BOX 7, STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 485-3802

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

TO: All Legislators, and to Legislative and Agency Staff  
FROM: *S. Smith* Sally Smith  
Personnel and EEO Officer  
SUBJECT: Sexual Harassment DATE: October 21, 1991

With the subject of sexual harassment so prominently in the spotlight, you may have questions about how the legislative branch would handle such an issue.

Sexual harassment is defined by the U.S. Equal Employment Opportunity Commission as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

While the federal Equal Employment Opportunity Commission (EEOC) enforces federal laws which prohibit discrimination, elected officials of a state or political subdivision and their personal staff members are excluded from provisions of the enabling Civil Rights Act. They are, however, subject to broader nondiscrimination provisions of Alaska State law.

*not in statute*  
Alaska statutes<sup>\*</sup> define harassment as:

unwanted conduct or communication by a supervisor, co-worker, or nonemployee in the work place which is based on the sex, color, race, religion, national origin, age, handicap, marital status, changes in marital status, pregnancy, or parenthood of an individual and which adversely affects the employment relationship or working environment. This includes slurs, epithets, threats, derogatory comments, unwelcome jokes, teasing and other verbal or physical conduct.

Rather than the State's EEO office, it is the State Commission for Human Rights which has the authority to investigate any complaints concerning discrimination that emanate from Alaska's legislative branch.

As your EEO officer, I am available to answer questions related to your rights as an employee or supervisor and to provide you with any assistance in working through your concerns. You are encouraged to contact me at the earliest possible time so that we may understand and resolve issues before they escalate into problems. I would hope that no one of us would ever face the situation--on either side--that was witnessed by the nation last week.

Equal Employment Opportunity Comm.

1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of section 703 of title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) Applying general title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory

employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

(Title VII, Pub. L. 88-352, 78 Stat. 253 (42 U.S.C. 2000e et seq.))  
[45 FR 74677, Nov. 10, 1980]

APPENDIX TO PART 1604—QUESTIONS AND ANSWERS ON THE PREGNANCY DISCRIMINATION ACT, PUB. L. 95-555, 92 STAT. 2076 (1978)

INTRODUCTION

On October 31, 1978, President Carter signed into law the *Pregnancy Discrimination Act* (Pub. L. 95-955). The Act is an amendment to title VII of the Civil Rights Act of 1964 which prohibits, among other things, discrimination in employment on the basis of sex. The *Pregnancy Discrimination Act* makes it clear that "because of sex"

\*The principles involved here continue to apply to race, color, religion or national origin.

serve a legitimate management purpose.

### 3. DEFINITIONS

3.1 Harassment: Unwanted communication and/or conduct by a supervisor, co-worker or non-employee in the workplace which adversely affects the employment relationship or working environment for the employee or applicant for employment and is based on the sex, race, religion, national origin, age, handicap, marital status, changes in marital status, pregnancy or parenthood of that individual. Harassment may include slurs, abusive language, threats, derogatory comments, unwelcome jokes, teasing and other such verbal or physical conduct.

★ 3.2 Sexual harassment: Addressed and defined by the U.S. Equal Employment Opportunity Commission in the Federal Guidelines on Discrimination Because of Sex published on November 10, 1980, and codified as 29 CFR Section 1604.11, sexual harassment is defined as follows:

"(a) Harassment on the basis of sex is violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment."

### 4. GUIDELINES FOR THE IMPLEMENTATION OF POLICY

#### 4.1 Responsibility for Implementation:

- (a) Overall responsibility for the administration of this order is delegated to the Director of the Division of Equal Employment Opportunity.
- (b) All agency heads, managers and supervisors within the Executive Branch of State Government are responsible for taking immediate and appropriate corrective action where they have any knowledge of such prohibited practices. Such corrective actions should be taken only after consultation with the State Division of Equal Employment Opportunity.

#### 4.2. Complaints:

- (a) Employees believing they have been subjected to harassment

15/10D1/0730-08/2

1/24/72  
Anchorage  
Daily News

# Harassment

## *Prevention better than cure*

After last fall's televised hearings on sexual harassment, some employers didn't waste any time. Before you could say "Clarence Thomas" or "Anita Hill," they had copies of their companies' harassment policies tacked to company bulletin boards.

So at least something good came out of these hearings. At least people became more aware of sexual harassment. At least they talked about it.

Now Sen. Rick Uehling, R-Anchorage, wants to make sure people remain aware. Sen. Uehling is sponsoring a bill that would require all employers with 15 or more workers to post information about sexual harassment in the workplace.

More red tape? More government interference? You could look at it that way. But then, all companies, public and private, already are bound by state and federal sexual harassment laws. If a simple, posted explanation could prevent a case of harassment, then it would keep government out of your business. Better prevention than damages or penalties.

Sexual harassment isn't the only form of discrimination, of course. It certainly would help to have people more aware of race or age or handicap discrimination as well. But, judging from the uproar over the Thomas-Hill hearings, people do seem to have particular trouble understanding sexual harassment. It couldn't hurt to give them more information while interest is high.

But perhaps the best way to see that education and prevention efforts on all kinds of discrimination are carried out is to fully fund the state Human Rights Commission. The commission has seen all complaints — including sexual harassment — go up 44 percent over the past year, while staffing has dropped by almost half over the past few years. Certainly the commission can't take on any new responsibilities under Sen. Uehling's bill, unless it gets the money to do so.

1/22/92  
Anchorage Daily News

## Bill aims to 'get the word out' on sexual harassment

The Associated Press

JUNEAU — Employers with 15 or more workers would be required to post information about sexual harassment in the workplace under proposed legislation introduced in the Senate Tuesday.

Notices must be placed in "prominent and accessible" locations, and include the federal definition of sexual harassment, a list of state and federal agencies that accept harassment complaints, and deadlines for filing complaints.

"I just don't think people know what constitutes sexual harassment in the workplace," said Sen. Rick Uehling, R-Anchorage and the bill's sponsor. "This bill is just trying to get the word out. It's a start."

Maine has adopted a similar law, he said.

Paula Haley, executive director of the state Human Rights Commission in Anchorage, said she reviewed a copy of the proposal Monday and planned to discuss it with the seven commissioners this week.

"I think posting notices about discrimination can be effective in advising employees of their rights and reminding employers of their responsibilities," Haley said.

Sexual harassment complaints filed with the commission last year doubled to about 28 cases from 14 the year before, Haley said. At least one of the cases investigated last year involved sexual harassment against a man.

Senate Bill 363 was assigned Tuesday to the Finance and Labor and Commerce committees.

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. CSSCR 28 (STA)

Revision Date: \_\_\_\_\_ Department Affected: Office of the Governor  
 Title: Human Rights Commission BRU: Human Rights Commission  
 prepared sex harassment handbook  
 Component: \_\_\_\_\_  
 Sponsor: UEHLING  
 Requestor: Senate State Affairs COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	23.1					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	12.6					
TOTAL OPERATING	35.7					

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	35.7					
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	35.7					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.) see attached memo from Human Rights Commission to Sen. Uehling (1/24/92)

Prepared By: Senate State Affairs Phone: x4522  
 Division: Alaska State Legislature Date: Feb. 5, 1992  
 Approved by Senator Pat Rodey *Pat Rodey*  
 Agency: Chairman, Senate State Affairs Date: Feb. 6, 1992

MEMORANDUM Human Rights Commission

**TO:** Senator Rick Uehling  
**FROM:** Paula M. Haley *PMH*  
Executive Director  
**DATE:** January 24, 1992  
**RE:** Advisory Memorandum on SCR 28

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Your legislative aide, Brian Butcher, asked me to provide your office with figures on the cost of implementing Senate Concurrent Resolution 28. The Commission has developed a rough estimate of the cost of producing and distributing a sexual harrassment handbook.

Approximately 250,000 employees would be eligible to receive handbooks under SCR 28. The estimated cost of producing a small handbook aproximately six (6) pages in length including the cover and mailer is \$23,100. Identifying all the employers in the state and making a one time distribution of the handbook would add a cost of about \$12,600 for a total of \$35,700.

Please feel free to contact me with any questions. Thank you.

# Senator Rick Uehling

Downtown, Elmendorf, Northeast Anchorage



Senate Finance Committee  
International Trade & Tourism Committee  
State Affairs Committee

## SUMMARY OF RESOLUTION

### SCR 28

#### A Resolution

Urging the Alaska State Commission for Human Rights to prepare a handbook on sexual harassment.

SCR 28 will urge the Alaska State Commission for Human Rights to prepare a handbook on sexual harassment for distribution by employers to employees. The handbook would give a detailed description of sexual harassment, when, how, and to whom to report it, and to show management level employees how to properly handle a sexual harassment complaint.

There is a significant amount of confusion by the public on what constitutes sexual harassment in the workplace and this handbook would help inform people as to what it is and how to report it. Sexual harassment in the workplace is believed to be substantially underreported and a handbook would give both employers and employees a more detailed understanding of sexual harassment and would help to deter the problem in the future.

MEMORANDUM Human Rights Commission

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Executive Director  
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Please feel free to contact me with any questions. Thank you.