

HB

468

Alaska State Legislature House of Representatives

Committees

Rules Committee, Chair
Legislative Council
International Trade & Tourism
Military & Veterans Affairs
World Trade & State/Federal Relations



Interim:
10928 Eagle River Rd. Suite 141
Eagle River, AK 99577

Session:
Alaska State Capitol
Juneau, AK 99801

HB 468 SPONSOR STATEMENT

HB 468 amends AS 18.80.130(1) to the effect that if the decision of the State Commission for Human Rights is delayed more than 90 days after the complaint was filed, the Commission may not award back pay for wages that the complainant would have earned after the 90th day after the complaint was filed.

The State Commission for Human Rights investigates claims of discrimination by employers, including cases alleging wrongful discharge due to alleged discrimination. Some 5,000 calls are received each year, with 9 investigators and two supervisors doing investigative work. 275 cases are presently on hold

We are advised that there is a major problem with delay. Sometimes cases take over two years to come to a determination. If the findings show probable cause, a reconciliation agreement is presented to the employer which includes payment of back wages for the entire time period the matter was under consideration. The potential monetary impact can be staggering. Further, the claim is still subject to review by other jurisdictions (local human rights commissions, Equal Employment Opportunity Commission).

This legislation provides incentive to the employee to find other employment as well as encouragement to the Commission to expedite the process. We are advised that some 62% of cases do not have substantial evidence to proceed. Quick and speedy decisions are in the best interest of both the employee and employer.

Representative Pete Kott

Juneau Office (907) 465-3777 Toll Free 1-800-861-KOTT(5688) Fax (907) 465-2819
Eagle River Office (907) 694-8944 Fax (907) 694-8945 E-Mail: representative_pete_kott@legis.state.ak.us



STATE OF ALASKA

TONY KNOWLES, GOVERNOR

HUMAN RIGHTS COMMISSION

800 A STREET, SUITE 204
ANCHORAGE, ALASKA 99501-3669
PHONE: (907) 274-4692 / 278-7474
TTY/TDD: (907) 278-3177
FAX: (907) 278-8588

March 13, 1998

Jim Hornaday
Office of the Honorable Pete Kott
Alaska House of Representatives
State Capitol
Juneau, AK 99801

VIA FAX (907) 465-2819

Dear Mr. Hornaday:

I am writing in response to your fax requesting confirmation or correction of the facts in the HB468 sponsor statement. You will find my confirmation/corrections below. I have also provided you with some background regarding the Commission's current inventory and the resulting delays in processing complaints.

SPONSOR STATEMENT

Paragraph 2: It is correct that the Commission investigates claims of discrimination brought by individuals against employers. For your information the agency also investigates complaints brought by Alaskans claiming discrimination in housing, practices by the state and its political subdivisions, places of public accomodation and by financial institutions.

Paragraphs 3 and 4: The Commission acknowledges delay in processing cases, this delay is almost never the cause for an increase in damage awards. The controlling law of employment discrimination, which the Commission is bound to follow, requires that in every case a complainant must make reasonable efforts to mitigate damages. This means, essentially, that those persons with pending discrimination complaints must try to find alternative employment or other means of income to offset those damages for which the respondent would otherwise be responsible.

Where a complainant finds alternative employment which provides less income, the respondent's liability is limited to the difference in pay. If the alternative employment pays more, no damages are allowed. And if the complainant fails to make reasonable efforts to find employment, the law limits a respondent's liability to little or no back pay at all.

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Jim Hornaday

March 13, 1998
Page 2

This legal principle is reflected in the back pay awards arrived at after Commission staff found substantial evidence of discrimination. Whether through conciliation, decision or settlement, the average amount of back pay paid to complainants by private employers, over the last ten years, has been approximately \$4,713.

BACKGROUND

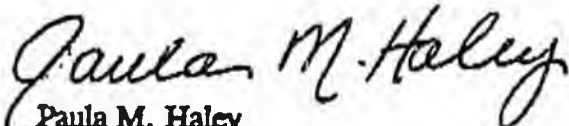
In the past fifteen years, complaints of discrimination filed with the Commission have nearly tripled. During this same time period the number of Commission staff dropped from 26 to 15 and only recently increased to 19. As a result, the complaint inventory is at its highest in its 34 year history. This despite closing 14% more cases in 1997 than in the prior year. The delays resulting from this dramatic increase in inventory, create frustration for both businesses charged with discrimination and those who believe they have experienced discrimination.

The Commission is committed to prompt investigation and eliminating these delays. To that end the Commission has revised its procedures, amended regulations and with the help of the Legislature passed legislation to increase efficiencies and save money. With support from the Governor and Legislature for budget increments, the Commission has increased its investigative staff.

The additional staff in Fiscal Year 1998 have helped reduce the backlog by 24%. The Commission's proposed Fiscal Year 1999 budget includes one full-time investigator who would be devoted to early resolution of cases through voluntary mediation. While the agency still faces a backlog the innovations to work smarter and additional resources are already reducing processing time.

Please feel free to contact me for additional information. I can be reached at 276-7474, Extension 241.

Sincerely,



Paula M. Haley
Executive Director

PHM/and
Rep. W

Cases Referred to the Alaska State Commission for Human Rights

A former female employee with a disability filed a claim in December 1995 because she was not given a position she had applied for. The case was dismissed by the Anchorage Human Rights Commission (AHRC) in June 1996. An appeal was filed in July, 1996 and was subsequently dismissed in August 1996. However, the AkSCHR has decided not to adopt the AHRC decision and will be conducting an investigation of their own. There has been no time frame discussed and until this matter is closed permanently, an exposure to back pay remains a potential and increasing risk. This case has back pay exposure of \$24,000 if the decision by the AkSCHR is in the claimant's favor.

A former employee filed a discrimination case with the AkSCHR in October 1994. In December, 1996, over two years later, a determination was made that there was probable cause (the employer disagreed). The employer was given 30 days to accept a conciliation agreement that basically implicated the employer as the guilty party. If the employer does not agree with the conciliation agreement, the case goes to hearing with the employer having to retain an attorney and still incurring liability for back wages. Potential liability exceeds \$30,000. Attorney's fees could approach \$10,000 - \$15,000. The potential liability in this case was a critical factor in the employer's decision to close the business.

Prospective employee filed a complaint indicating that she was discriminated against due to religious beliefs when applying for employment in April 1995. The individual had stated that her religious beliefs would not allow her to wear a skirt on the job. Complaint filed August, 1995. In September 1995 a letter was received from the AkSCHR stating that no investigator had been assigned due to heavy case load. In February 1996 an investigator was finally assigned. At the end of December, 1996 the case was finally closed with the findings of no fault on the part of the employer. Almost two years of back wages were at stake in this case.

A former minority male employee filed a claim in December 1996 for a position he did not receive while employed in May 1996. Employee requested the next available position and back wages. The AkSCHR sent a letter that they were backlogged and that "their inventory of cases has grown at a disproportionate rate to the number of investigators available... and.. to manage our inventory we must hold this case and other new cases in a suspense cabinet.. we will assign held cases in order of receipt as investigators' case load allows". The letter went on to indicate this could take three to four months. The exposure for the back wages for this claim was approximately \$29,000.

A former minority female employee filed a claim in January 1995 for a position she did not receive in March 1994 and October 1994. This claim was closed in October, 1996 a full two years of potential back pay at stake to the employer.

03/19/98
09:16:28

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:80473 SCHEDULED FOR:03/19/98 08:00 TO 10:00
PUBLIC HEARING HOUSE STATE AFFAIRS

LTN1150
BY:JNU
FOR:ALL

LOCATION: ANCHORAGE

HB 468	PAULA	HALEY	HUMAN RES COMM.	TESTIFY
HB 468	CLARENCE	THOMPSON		TESTIFY
HB 463	KAREN	ROGINA <i>Exec. Director</i>	AK HOTEL ASSOC	TESTIFY

LOCATION: FAIRBANKS

HB 468	MR.	FRANK	ROSE	AK LODGING MGT	TESTIFY
HB 408	MR.	ROD	COMBELICK	AK DEPT OF NR	TESTIFY

03/19/98
08:14:43

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
SCHEDULED FOR: 03/19/98 08:00 TO 10:00
PUBLIC HEARING HOUSE STATE AFFAIRS

LTN1150
BY: JNU
FOR: ALL

TCN: 80473
PUBLIC HEARING

LOCATION: ANCHORAGE
HB 468
HB 468

Martha Ciore
PAULA HALEY
CLARENCE THOMPSON

HUMAN RES COMM. TESTIFY
TESTIFY

LOCATION: FAIRBANKS
HB 468 MR.

Karen Regina
FRANK ROSE

AK Hotel Acgn
AK LODGING MGT TESTIFY

Page 2, Line 5, after "filed;" add "if the commission determines that the a delay beyond 180 days is caused by the employer, then the 180 limit on award of back pay for wages does not apply."

Amendment to HB468 "Damage Awards Human Rights Commission,"

submitted by House Rules Committee

3/21/98

Kathy + Paula

Talked 3/25 -

No resolution
yet -

HOLD !!

Kathy will call
Paula & Jack
to her
directly!

3/25/98

Jerry Cramer
Chapter

Use poster
radiation ?

Sophie -
Kathy Schultz
479-3650
FAX: 479-7051

463-3408

Mitch Cravo

Karen Rogne Exec Dir.

AK Hotel/Motel Assoc.

Paula Haley -

include in

teleconf -

HB 468

907-276-7474

X 241.



ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

JAMES CHASE
COMMISSIONER

HEADQUARTERS OFFICE
800 A STREET, SUITE 204
ANCHORAGE, ALASKA 99501-3669

E-MAIL ADDRESS:
Jchase02@Interserv.com
(907) 276-7474
FAX (907) 278-8588

Peer Kelly Schuttz

3/25/98 - They STILL want this!

Use termination date as start date for

Back Wages "not to exceed 90 days from termination date."

Get 3 employees' interviewed signatures.

3/24/98

Asked Paula Kelly

Check AAC - how is this enforced?

(Requiring person to look for work - Is this policy in writing?)

She'll send me into

Peer Paula

Maybe best to use "Duty to Mitigate"

"~~It~~ make less intense or severe."

FAX TRANSMISSION SHEET

Alaska State Commission For Human Rights

800 A Street, Suite 204
Anchorage, Alaska 99501-3669

PHONE: (907) 274-4692 or (907) 276-7474

FAX: (907) 276-7462

DATE: March 24, 1998 TIME: 2:37 pm

TO: Barbara Cotting FROM: Paula Haley
Office of the Honorable
Jeannette James, State Affairs Ch Executive Director

FAX #: (907) 465-2381

THIS FAX IS:

- CONFIDENTIAL
- URGENT
- For action/processing
- For your information
- As requested
- Hard copy will follow

ADDITIONAL INFORMATION:

Barbara,
(I hope that this information)
helps.
Paula

PLEASE CALL IMMEDIATELY IF YOU DO NOT RECEIVE ALL PAGES. THANK YOU.

of Pages: 4
(Including cover sheet)

Operator: Sharon Defreez
Extension No.: x 239

TONY KNOWLES, GOVERNOR

HUMAN RIGHTS COMMISSION

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March 24, 1998

Barbara Cotting
Office of the Honorable Jeannette James
Alaska House of Representatives
State Capitol, Room 102
Juneau, AK 99801-1182

VIA FAX (907) 465-2381

Re: Question on Mitigation of Damages

Dear Ms. Cotting,

Thank you for your call earlier today. I hope that the following information is of assistance to you.

The duty to mitigate back pay damages is not specifically set forth in a Commission statute or regulation. Nevertheless, this is a legal principle to which the Commission adheres, and which all respondents are entitled to invoke.

The duty flows from the general legal principle that any person complaining of a wrong has a responsibility to lessen damages flowing from that wrong. The Alaska Supreme Court has recognized that this duty is the "universal rule." University of Alaska v. Chauvin, 521 P.2d 1234, 1239 (Alaska 1974). The Commission has consistently followed this principle.

In Sharon Webb v. VECO, Inc., ASCHR No. C-88-295, the Commission's decision cited to the Alaska Supreme Court's decision, stating that "the universal rule [is] that a wronged party must use reasonable efforts to avoid the consequences of injury done by another. . . . In other words, Sharon Webb has the burden of proving liability and that she made an effort to mitigate her damages." Final Order, September 24, 1993, at 17. Earlier, in Margaret Chambers v. Engine & Gear Co., Inc., ASCHR No. C-89-004, the Commission recognized the duty to mitigate back pay damages, and found that this duty had been satisfied when the complainant found another job within two weeks, and thus limited back pay to the same two-week period. Final Order, July 26, 1991, at 11. More recently, in Terra Jean Richardson v. Kurani, Inc., ASCHR No. C-94-181, the Commission awarded back pay for only four weeks, even though the complainant was out of work for much longer. The Commission found that the complainant did not show any efforts to mitigate damages, but awarded limited damages because it was unlikely that the complainant could have found another job within four weeks time.

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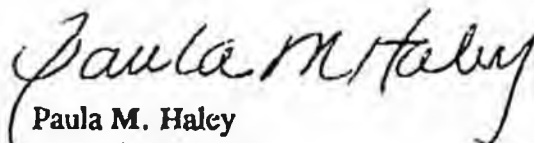
Barbara Cotting
Re: Mitigation of Damages

March 24, 1998
Page 2

The Commission has also followed this principle as a policy in settling damages claims. For example, in the only case cited by the Alaska Hotel and Motel Association in which back pay was awarded, the complainant found another job within two weeks of her termination. This was the reason back pay was limited to \$2,400. See attached letter from Mark Ertischek to Robert Royce transmitting the Settlement Agreement.

If you need additional information regarding the requirement that a person with a discrimination complaint mitigate his or her damages, please let me know. I can be reached at 276-7474, Extension 241.

Sincerely,



Paula M. Haley
Executive Director

Enc.

PMB/rod
HB468/Cotting

TONY KNOWLES, GOVERNOR

HUMAN RIGHTS COMMISSION

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FAX: (907) 278-8588

May 16, 1997

Robert Royce Esq.
Assistant Attorney General
Alaska Department of Law
1031 West 4th Avenue, Suite 204
Anchorage, Alaska 99501

Re: Armstrong v. Chena Hot Springs Resort
ASCHR No. D-94-077

Dear Assistant Attorney General Royce:

I am enclosing the Settlement Agreement signed by the parties to the above entitled case. Please forward the Settlement Agreement to the settlement Commissioner. I believe that this is a full relief settlement and I hope it will be approved as soon as possible.

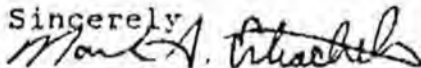
Ms. Armstrong worked as a housekeeper. she alleged that she was terminated because of her race, age and marital status. The staff determined that substantial evidence supported Ms. Armstrong's allegations of race and age discrimination but not her allegation of marital status discrimination.

Ms. Armstrong found another, higher paying, job shortly after termination. She is not interested in reinstatement in her former position. The respondent offered to pay complainant damages that approximate her lost earnings. Complainant agreed with the amount offered.

The entity responsible for terminating complainant was North American Asset Management Inc., a management company. After the investigation, the NAAM ended its contract to manage the Chena Hot Springs Resort and decided to go out of business. However, NAAM agreed to train its managers and supervisor on the requirements of Alaska civil rights law if it continues to engage in business in Alaska after June 30, 1997.

Please contact me if you have any questions.

Sincerely,


Mark A. Ertischek
Human Rights Advocate

Toll Free
In Alaska (800) 478-4692
TTY / TDD Only (800) 478-3177

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

HUMAN RIGHTS COMMISSION

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FAX: (907) 278-8588

March 26, 1998

Barbara Cotting
Office of the Honorable Jeannette James
Alaska House of Representatives
State Capitol, Room 102
Juneau AK 99801-1182

VIA FAX (907) 465-2381

RE: Mitigation of Damages

Dear Ms. Cotting;

For your information I have attached a copy of the Commission's Post Charge Counseling sheet. In accordance with Section 2.09 of the Commission's Procedures Manual, at the time a complaint is filed, the agency staff counsels a potential complainant regarding their rights and responsibilities. You will note that included in the Post Charge Counseling is the requirement to mitigate damages, including documentation of job seeking efforts and expenses incurred. This is the method used by the Commission to relate to complainants the legal principles outlined in my letter to you yesterday.

Also enclosed is a copy of an article from today's Anchorage Daily News regarding a \$125,000 settlement for emotional distress in a sexual harassment suit. This is a case which was originally filed with the Equal Employment Opportunity Commission. In this case the complainant's attorney took the case to court and was able to secure damages for emotional distress. As you may recall from the Commission's testimony, those damages are not available before our agency.

Please call me at extension 241 if you have any additional questions.

Sincerely,


Paula M. Haley
Executive Director

enc: as noted

PMH/mak

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POST CHARGE COUNSELING

COMPLAINANT'S NAME _____

PCC DATE _____ INVESTIGATOR _____

I explained the following to complainant:

___ Option of court action/statute of limitation - two years (AS 22.10.020(c)).

___ Impartial investigative role of commission.

___ Investigative procedures.

___ Complainant's right to have representative (interpreter, etc), if applicable or legal counsel during commission proceedings.

___ Complainant's responsibility to advise change of address and/or phone number.

___ AERC/EEOC worksharing information, where applicable.

___ ASCHR caseload / possible waiting periods.

___ Complainant's duty to mitigate damages, including documentation of job seeking efforts and expenses incurred.

Complainant's desired relief is: _____

14. If notary public or postmaster is unavailable, complainant may swear to and certify the complaint by signing and dating Section 14. The place of this action must be entered in Section 14.

2.05 LENGTHY COMPLAINTS: In general, complaints will be drafted in sufficient form using one page of the complaint form. Additional pages may be added as needed. Each page of the complaint form will be signed by the complainant and verified or notarized.

2.06 COMPLETING HUD FORMS: In general, HUD Form 903 will be used in addition to ASCHR Form No. 85-09 to file housing discrimination complaints. Complaints alleging violations of AS 18.80.230 and/or .240 which are not jurisdictional under Title VIII of the 1968 Civil Rights Act will be filed on ASCHR Form No. 85-09. *No longer applicable*

2.07 COMPLETING THE AUTHORIZATION TO RELEASE INFORMATION: The investigator will assist complainants to complete the Authorization to Release Information (ASCHR Form No. 85-07) as part of the initial filing of the complaint and place in the complaint file

2.08 COMPLETING THE COMPLAINT PROCESS BY MAIL: If the complainant is not able to sign the appropriate documents in person, the investigator will mail the complaint(s) and authorization to release information forms to complainant along with the cover letter, found as Exhibit 2.08. Complainant will be given 10 days from the date on the letter to return the signed forms. If the forms are not returned by the due date, the file will be stored as an unperfected complaint. Unperfected complaints are kept for two years.

* 2.09 ADDITIONAL COUNSELING: During intake, the investigator will explain to complainant the right to file a complaint in court under AS 22.10.020(c) and the two year statute of limitations, the commission's impartial investigation and procedures, complainant's right to have legal counsel during the investigation, complainant's responsibility to keep in touch with the commission, complainant's duty to mitigate damages and other pertinent information about the processing of the case. The investigator will obtain from complainant the desired remedy and the terms of a possible settlement. The investigator will complete the post charge counseling checklist, found as Exhibit 2.09, and place it in the case file.

2.10 COMPLETING THE INTAKE NOTES: The investigator will complete the Intake Notes (ASCHR Form No. 85-19) to memorialize the intake interview and place this document as evidence in the file. Documents submitted by complainant at intake will be date stamped and placed in the file with a Cover Sheet (ASCHR Form No. 85-10) as evidence.

2.11 COMPLETING THE HERO SOURCE DOCUMENT: The investigator will complete the five-page HERO Source Document, found as Exhibit 2.11(a). Specific instructions and codes are found as Exhibit 2.11(b).

2.12 COMPLETING THE MIS SOURCE DOCUMENT: The investigator will complete numbers 9, 10, 17-21 and 55 on the one-page MIS Source Document, found as Exhibit 2.12(a). Specific instructions and codes are found as Exhibit 2.12(b).

rules for handling heat exhaustion in soldiers in the wake of a medical report showing that an 18-year-old Alaska National Guardsman died last summer after drinking too much water to ease his heat exhaustion.

"The guideline has always been 'when in doubt, give water,'" Lt. Col. Richard Kaiura said. "That's going to change."

A December medical report from the Armed Forces Institute of Pathology in Washington originally concluded that

An amended medical report, compiled by the chief of pathology at the post's Martin Army Community Hospital and shown to Kaiura last week, shows that Dock essentially drank himself to death.

When Dock began vomiting and acting delirious on a rifle range, drill sergeants began giving him water — lots of it.

Instead of helping Dock, the soldiers forcing fluids into him unwittingly contributed to his death, Kaiura,

the *Columbus Ledger-Enquirer* on Tuesday.

"The drill sergeants tried to do the right thing," Kaiura said. "Until this happened, no one thought that you could drink too much water."

Kaiura said Dock was encouraged to drink "large quantities of water." Post spokeswoman Monica Mangano said Wednesday she did not have access to the medical report to find out exactly how much water Dock drank.

"Just plain water can be lethal, especially if someone is

at Michigan State University.

Adams said sweating causes a loss of crucial electrolytes — sodium, potassium and others — as well as water. People must replace both at the same time to avoid serious health problems.

Dock's father, Paul Dock, told the newspaper Tuesday from his home in Kipnuk that he had not received any official information about his son.

In the past, he and other family members have criticized the Army for taking recruits from Alaska's cool climate to basic

Alaska National Guard spokesman Capt. Mike Haller said the decision to attend basic training during the summer is made by each recruit.

"We send them year-round. We have done that for decades. We try to advise young people to make a decision to go over the winter or spring or fall, not summer. But sometimes, a young man or woman decides to go during the summer," he said Wednesday.

On July 2, 1997, Dock was out on a rifle range as part of

Woman who was shrink-wrapped wins harassment suit

The Associated Press

JUNEAU — A woman who was shrink-wrapped to a pallet by her co-workers at a Pepsi bottling plant has been awarded \$125,000 in a sexual harassment lawsuit.

The jury found that Pepsi-Cola Bottling Co. of Alaska knew Joyce Crosby was subjected to a hostile working environment when she worked there as a part-time secretary in 1995. The panel also found that Tim Steinnmuller, her supervisor, did nothing to correct the situation.

On Monday, the jury ordered Pepsi to pay \$123,750 for emotional distress. One of Crosby's co-workers, Richard Sjoroos, hit Crosby without intending to cause her harm, the jury found. He was ordered to pay \$1,250.

Crosby testified Sjoroos and Hal Kulm began by telling crude jokes and snapping her bra strap. Over time, they pulled her hair, pushed, poked and hit her. She complained to the U.S. Equal Employment Opportunity Commission in 1995 and filed her lawsuit in 1997.

Sjoroos said Crosby would laugh when he would "play-punch" her. Testifying about the shrink-wrapping, Kulm said Crosby had leaned against the pallet and refused to move.

"She was the only woman in the shop and they treated her differently because of that," said Jeff Friedman, one of Crosby's attorneys.

A psychiatrist testified that Crosby suffered from depression, nausea and panic attacks after working at the bottling plant, Friedman said.

Pepsi plans an appeal, said Nancy Pritikin, one of the company's lawyers.

An internal investigation turned up "no evidence to support the plaintiff in this case," Pritikin said Tuesday. "Pepsi has a very strong sexual harassment policy and has zero tolerance for any kind of sexual harassment."

Crosby left the company and moved to New England, where she teaches art at an elementary school, Friedman said.

ADN 3-26-97

Alaska State Commission for Human Rights

800 A Street, Suite 204

Anchorage, AK 99501-3669

Barbara Cotting

Office of the Honorable Jeannette James

Alaska House of Representatives

State Capitol, Room 102

Juneau, AK 99801-1182

FAX TRANSMISSION SHEET

Alaska State Commission For Human Rights

800 A Street, Suite 204
Anchorage, Alaska 99501-3669

PHONE: (907) 274-4692 or (907) 276-7474

FAX: (907) 276-7462

DATE: March 30 1998 TIME: 1:21 pm

TO: Jeannette James FROM: Paula M. Haley

Representative Executive Director

FAX #: (907) 465-2381

THIS FAX IS:

CONFIDENTIAL

URGENT

For action/processing

For your information

As requested

Y/N Hard copy will follow

ADDITIONAL INFORMATION:

PLEASE CALL IMMEDIATELY IF YOU DO NOT RECEIVE ALL PAGES. THANK YOU.

of Pages: 10
(Including cover sheet)

Operator: Sharon DeFreez
Extension No.: x 239

TONY KNOWLES, GOVERNOR

HUMAN RIGHTS COMMISSION

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FAX: (907) 278-8588

March 30, 1998

The Honorable Jeannette James
State Affairs Committee Chair
Alaska House of Representatives
State Capitol, Room 102
Juneau, AK 99801-1182

*Via Fax (907) 465-2381***Re: House Bill 468**

Dear Representative James:

Thank you for the opportunity to testify and answer questions on House Bill 468 at the State Affairs hearings held on March 19 and 24, 1998. This letter is in response to questions you and other committee members raised during these hearings. I have also provided information which I hope will be helpful regarding some of the issues raised during the discussion.

After listening to testimony on HB 468 and again reviewing Frank Rose's letter to Mitch Gravo, which, I understand, generated this legislation, I wish to underscore the Commission's belief that this bill will result in greater and not lesser hardship for businesses.

As I have noted in earlier correspondence the legal principle of mitigation of damages governs the decisions of staff and Commissioners when settling cases or making awards. I wish to underscore that if a complainant fails to mitigate his or her damages, as required under the law he or she will not be entitled to damages before the Commission.

EXAMPLES

To further illustrate why fears of unlimited damages before the Commission are unfounded, I will refer to the examples noted in Mr. Frank Rose's letter to Mitch Gravo.

In only one of these five examples did the Commission find substantial evidence of discrimination. As stated in my testimony, staff found substantial evidence to support the 61-year-old Alaskan Native woman's complaint that Chena Hot Springs Resort discriminated

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The Honorable Jeannette James

March 30, 1998

Page 2

against her because of her race and age. As required by law, the former employee mitigated her damages. In fact, she secured another higher paying job within three weeks of being fired - limiting the damages to \$2,400 in back pay.

In three of the examples staff did not find substantial evidence of discrimination and closed the cases. Even had staff found in favor of these complainants' damages would have been limited. In one instance the applicant found another higher paying job one week later; in another the applicant took himself out of the job market; and in the third, the employee continued to work for the employer. In the one example where staff has not yet completed the investigation, that employee has her own business and a part time job, which would greatly limit damages if staff found in her favor.

RISK OF GREATER LIABILITY

Since the Commission follows the legal principle which requires mitigation of damages, and punitive and compensatory damages are not available before the agency, the average back pay award paid by private employers in cases before the Commission is \$4,713.

However, if this legislation becomes law the employer will likely be liable for greater damages for a couple of reasons. First, the federal Equal Employment Opportunity Commission (EEOC) has stated that it will review the awards capped by this legislation and would pursue the additional remedies available to it including punitive and compensatory damages. As you know, our agency may only award back pay, and not additional damages. EEOC's average award at conciliation in cases where it found in favor of the complainant is \$31,720¹ which is \$27,007 higher than that awarded by our Commission.

In addition, it is reasonable to expect that with a cap on back pay, many people will choose to file their complaints in federal or state court where damages will be greatly increased. Just this week an employee received \$123,750 for emotional distress in a sexual harassment case filed in Superior Court. These damages are not available before the Commission in such cases. Employers will be more likely to seek legal counsel to defend a case in court than before the Commission.

BURDEN ON EMPLOYER

The Commission also asks that the Committee consider the substantial burden that this legislation would place on employers who would have to respond to the Commission's request for records and interviews in short order. Currently when the Commission staff requests information from employers they frequently allow the employer additional time to provide

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The Honorable Jeannette James

March 30, 1998

Page 3

information. For example, if an employer cannot afford to make a key management witness available to speak to us in a given month due to its retail schedule or seasonal deadlines, staff will consider the employer's needs. Often employers will ask for additional time to gather personnel or application files that the staff needs for comparative evidence.

Under this legislation, the Commission staff would have to make every effort to meet the mandate of our statute and move the cases within 90 days. Therefore staff would no longer be in a position to be flexible and grant extensions to employers who wanted more time to provide witnesses and/or evidence.

If this legislation passes the EEOC may terminate its contractual relationship with the Commission. If this occurs, employers will have to respond to requests for information/evidence from two separate enforcement agencies. This will certainly prove more time consuming and costly.

BUDGET INCREASE

The loss of the EEOC contract would reduce the Commission's current budget by 10%, requiring the State to pick up more of the cost of civil rights enforcement in Alaska. The agency may well lose revenue at a time when it needs additional resources more than ever. This legislation has a large fiscal note attached to it because it would require considerably more staff than the Commission currently has to process complaints of discrimination from the initial filing through investigation, conciliation, preparation for hearing, hearing, and decision.

AVERAGE PROCESSING TIME

The time it takes for the Commission to process a complaint has increased considerably over the past six years. This is because, even with increased efficiencies, the reduced workforce could not keep pace of the dramatic increase in cases filed with the agency.

I have attached a chart entitled "Workload/Resources/ Processing Days" that shows the agency's workload and resources since 1982 and processing days² beginning in 1992. As shown on this chart the time to process parallels the increase in our complaint inventory.

The biggest problem for the agency presently is the investigative backlog. This refers to the cases which have been filed but not yet assigned to an investigator. The agency currently has 275 unassigned cases and it is taking approximately 9 months from filing to assignment.

Once a case is assigned to an investigator the time it takes to complete the investigation varies considerably from case to case. Currently the average time to process is 627 days. In 1990

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The Honorable Jeannette James

March 30, 1998

Page 4

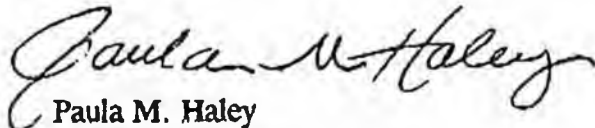
before the increase in filings and inventory and before the staffing level dropped to 15, the agency processed cases on average within 319 days.

The time it currently takes to process cases in which staff found substantial evidence of discrimination and was unable to conciliate is 1175 days. This additional time is due not only to the Commission's limited resources in the hearing unit, but is also subject to the scheduling needs of the employers. However, as noted above, regardless of the time it takes to process a case in the hearing unit - the complainant has the duty to mitigate damages.

I hope that this information responds to several of the questions raised and clarifies the impact of this legislation on the Commission and the Alaskan public.

If you have any questions, please call me at 276-7474, extension 241.

Sincerely,

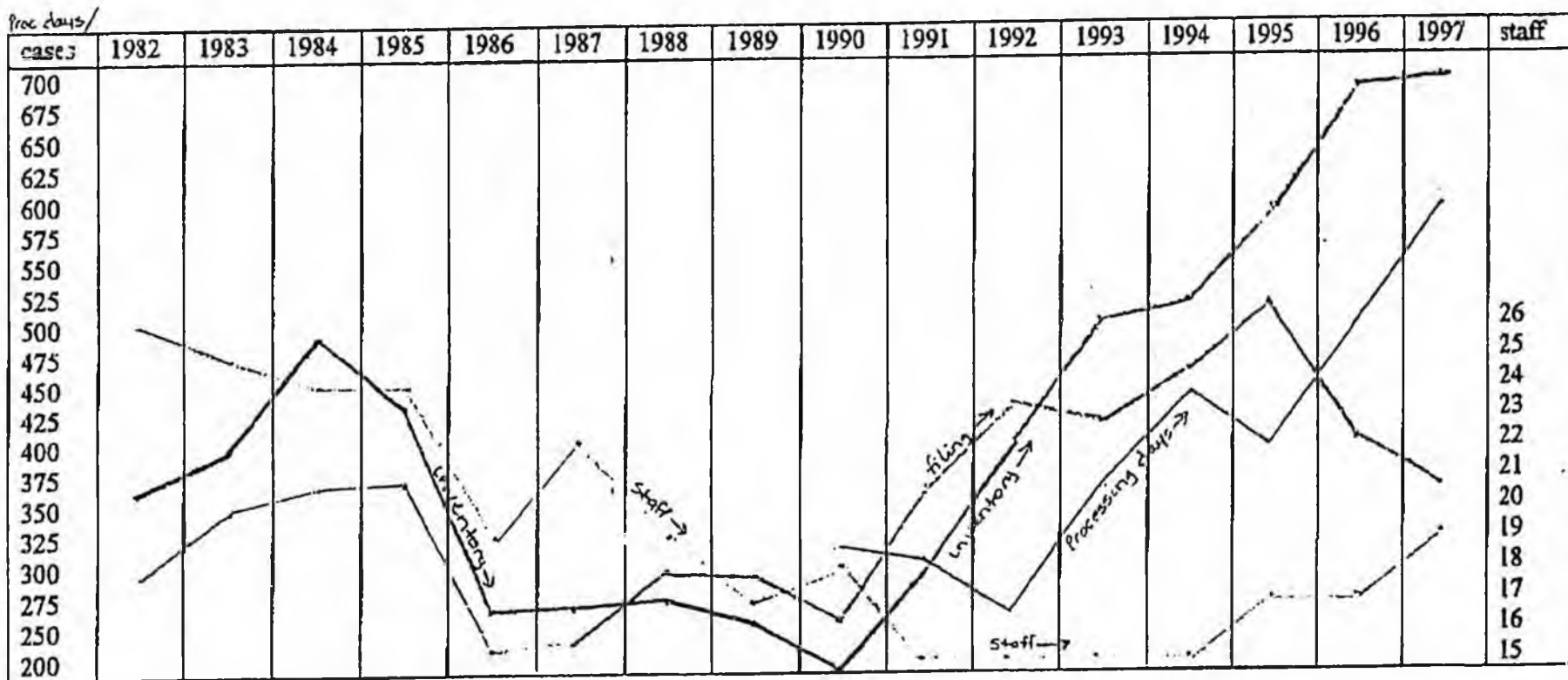


Paula M. Haley
Executive Director

C: House State Affairs
Committee Members

Enc. As stated

WORKLOAD / RESOURCES / PROCESSING TIME



Filings
 Staff
 Inventory
 Processing days (start 1990)

STATE OF ALASKA

HUMAN RIGHTS COMMISSION

TONY KNOWLES, GOVERNOR

800 A STREET, SUITE 204
ANCHORAGE, ALASKA 99501-3669
PHONE: (907) 274-4692 / 276-7474
TTY/TDD: (907) 276-3177
FAX: (907) 278-8588

March 30, 1998

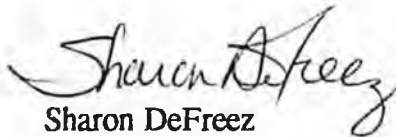
Barbara Cotting
Office of the Honorable Jeannette James
Alaska House of Representatives
State Capitol, Room 102
Juneau, AK 99801-1182

Dear Ms. Cotting,

Please find enclosed hard copies of Ms. Haley's letter to Representative James (faxed earlier today). We decided to send these hard copies because the charts are so difficult to read without the color. Is it possible that you or a member of your staff could distribute these to State Affairs Committee members?

Thank you very much for your assistance in this matter.

Sincerely,


Sharon DeFreez
Commission Secretary

Enc.

House State Affairs Committee Members:

Honorable Jeanette James

Honorable Mark Hodgins

Honorable Kim Elton

Honorable Al Vezey

Honorable Ethan Berkowitz

Honorable Ivan Ivan

Honorable Joe Ryan

House State Affairs Committee Members:

Honorable Jeanette James

Honorable Mark Hodgins

Honorable Kim Elton

Honorable Al Vezey

Honorable Ethan Berkowitz

Honorable Ivan Ivan

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Honorable Ivan Ivan

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STATE OF ALASKA

HUMAN RIGHTS COMMISSION

TONY KNOWLES, GOVERNOR

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ANCHORAGE, ALASKA 99501-3669
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March 30, 1998

The Honorable Jeannette James
State Affairs Committee Chair
Alaska House of Representatives
State Capitol, Room 102
Juneau, AK 99801-1182

Via Fax (907) 465-2381

Re: House Bill 468

Dear Representative James:

Thank you for the opportunity to testify and answer questions on House Bill 468 at the State Affairs hearings held on March 19 and 24, 1998. This letter is in response to questions you and other committee members raised during these hearings. I have also provided information which I hope will be helpful regarding some of the issues raised during the discussion.

After listening to testimony on HB 468 and again reviewing Frank Rose's letter to Mitch Gravo, which, I understand, generated this legislation, I wish to underscore the Commission's belief that this bill will result in greater and not lesser hardship for businesses.

As I have noted in earlier correspondence the legal principle of mitigation of damages governs the decisions of staff and Commissioners when settling cases or making awards. I wish to underscore that if a complainant fails to mitigate his or her damages, as required under the law he or she will not be entitled to damages before the Commission.

EXAMPLES

To further illustrate why fears of unlimited damages before the Commission are unfounded, I will refer to the examples noted in Mr. Frank Rose's letter to Mitch Gravo.

In only one of these five examples did the Commission find substantial evidence of discrimination. As stated in my testimony, staff found substantial evidence to support the 61-year-old Alaskan Native woman's complaint that Chena Hot Springs Resort discriminated

*Toll Free
In Alaska (800) 478-4692
TTY / TDD Only (860) 478-3177*

against her because of her race and age. As required by law, the former employee mitigated her damages. In fact, she secured another higher paying job within three weeks of being fired - limiting the damages to \$2,400 in back pay.

In three of the examples staff did not find substantial evidence of discrimination and closed the cases. Even had staff found in favor of these complainants' damages would have been limited. In one instance the applicant found another higher paying job one week later; in another the applicant took himself out of the job market; and in the third, the employee continued to work for the employer. In the one example where staff has not yet completed the investigation, that employee has her own business and a part time job, which would greatly limit damages if staff found in her favor.

RISK OF GREATER LIABILITY

Since the Commission follows the legal principle which requires mitigation of damages, and punitive and compensatory damages are not available before the agency, the average back pay award paid by private employers in cases before the Commission is \$4,713.

However, if this legislation becomes law the employer will likely be liable for greater damages for a couple of reasons. First, the federal Equal Employment Opportunity Commission (EEOC) has stated that it will review the awards capped by this legislation and would pursue the additional remedies available to it including punitive and compensatory damages. As you know, our agency may only award back pay, and not additional damages. EEOC's average award at conciliation in cases where it found in favor of the complainant is \$31,720¹ which is \$27,007 higher than that awarded by our Commission.

In addition, it is reasonable to expect that with a cap on back pay, many people will choose to file their complaints in federal or state court where damages will be greatly increased. Just this week an employee received \$123,750 for emotional distress in a sexual harassment case filed in Superior Court. These damages are not available before the Commission in such cases. Employers will be more likely to seek legal counsel to defend a case in court than before the Commission.

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The Honorable Jeannette James

March 30, 1998
Page 4

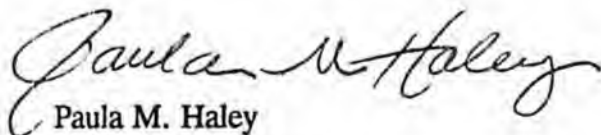
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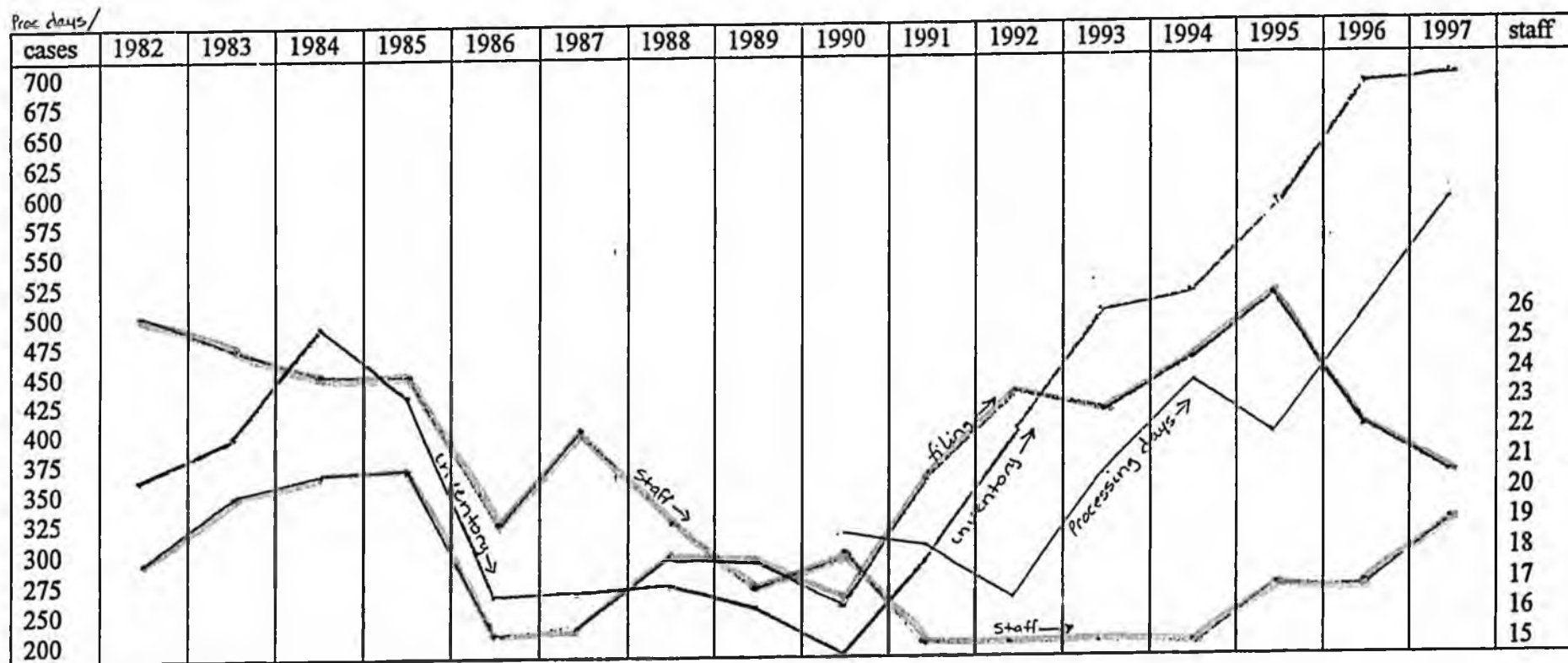


Paula M. Haley
Executive Director

C: House State Affairs
Committee Members

Enc. As stated

WORKLOAD / RESOURCES / PROCESSING TIME



Filings

~~Staff~~

Inventory

Processing days (start 1990)



ALM Alaska Lodging Management, Inc.

P.O. Box 72478

Fairbanks, Alaska 99707-2478

250 Cushman St., Suite 4C

Phone 907-474-8555

Fax 907-474-8557

March 23, 1998

Representative Jeannette James, Chair
House State Affairs Committee
State Capital
Juneau, AK 99801

Thank you for the opportunity to testify at the recent hearing concerning HB468 ("An Act relating to damages awarded in complaints before the State Commission for Human Rights).

As a small business owner, I am very concerned about the provisions in the current law that potentially places unlimited liability on employers. The major problem that presents itself is that AkSCHR sometimes takes over two years to make a determination. If their findings show that there is probable cause, then a conciliation agreement is presented to the employer. That conciliation agreement contains a number of provisions, not the least of which is a provision for the employer to pay back wages during the entire period the AkSCHR has been considering the case. An employer can sign this agreement and the case will go away. The employer admits no wrong doing and the former employer agrees not to pursue the matter further. The problem, however, is that over the 2 - 3 years the case was being considered by the AkSCHR, wages in the tens of thousands of dollars could have accrued and the employer is liable. The potential monetary impact from these delays can be staggering. Furthermore, a claim once decided upon by one organization is still subject to review and acceptance or rejection by other organizations that have jurisdiction: (local human rights commissions, Equal Employment Opportunity Commission).

I am not suggesting that the AkSCHR limit the time required to investigate a case and pull the facts together adequately to render a determination. I am suggesting that should any back pay be a part of the settlement agreement, that the amount be limited to 90 days wages. This does not eliminate the possibility of other monetary awards that might be proposed in the conciliation agreement. If an employer does not accept the settlement, and the case goes forward to the courts, then, if found at fault, the employer could be liable for additional penalties not tied to wages. 90 days should be adequate to find new employment and the prior employer should not be responsible, whether at fault or not. Other penalties/fines may be imposed and appropriate for wrongdoing.

I hope that you will consider the above information in making your decision on changes to the Human Rights Commission Statutes. For your information, I have attached summaries of several cases that were brought to my attention by hotel operators.

Yours sincerely,

Frank W. Rose
President
Alaska Lodging Management, Inc.

Cases Referred to the Alaska State Commission for Human Rights

A former female employee with a disability filed a claim in December 1995 because she was not given a position she had applied for. The case was dismissed by the Anchorage Human Rights Commission (AHRC) in June 1996. An appeal was filed in July, 1996 and was subsequently dismissed in August 1996. However, the AkSCHR has decided not to adopt the AHRC decision and will be conducting an investigation of their own. There has been no time frame discussed and until this matter is closed permanently, an exposure to back pay remains a potential and increasing risk. This case has back pay exposure of \$24,000 if the decision by the AkSCHR is in the claimant's favor.

A former employee filed a discrimination case with the AkSCHR in October 1994. In December, 1996, over two years later, a determination was made that there was probable cause (the employer disagreed). The employer was given 30 days to accept a conciliation agreement that basically implicated the employer as the guilty party. If the employer does not agree with the conciliation agreement, the case goes to hearing with the employer having to retain an attorney and still incurring liability for back wages. Potential liability exceeds \$30,000. Attorney's fees could approach \$10,000 - \$15,000. The potential liability in this case was a critical factor in the employer's decision to close the business.

Prospective employee filed a complaint indicating that she was discriminated against due to religious beliefs when applying for employment in April 1995. The individual had stated that her religious beliefs would not allow her to wear a skirt on the job. Complaint filed August, 1995. In September 1995 a letter was received from the AkSCHR stating that no investigator had been assigned due to heavy case load. In February 1996 an investigator was finally assigned. At the end of December, 1996 the case was finally closed with the findings of no fault on the part of the employer. Almost two years of back wages were at stake in this case.

A former minority male employee filed a claim in December 1996 for a position he did not receive while employed in May 1996. Employee requested the next available position and back wages. The AkSCHR sent a letter that they were backlogged and that "their inventory of cases has grown at a disproportionate rate to the number of investigators available... and... to manage our inventory we must hold this case and other new cases in a suspense cabinet... we will assign held cases in order of receipt as investigators' case load allows". The letter went on to indicate this could take three to four months. The exposure for the back wages for this claim was approximately \$29,000.

A former minority female employee filed a claim in January 1995 for a position she did not receive in March 1994 and October 1994. This claim was closed in October, 1996 a full two years of potential back pay at stake to the employer.

TO: Honorable Members of State Affairs Committee: Rep. James - Chair
Rep. Dyson; Rep. Ivan; Rep. Hodgins; Rep. Vezey; Rep. Berkowitz; Rep. Elton

FROM: City and Borough of Juneau Human Rights Commission

SUBJECT: HB 468

"An act relating to damages awarded in complaints before the State Commission for Human Rights."

Please vote against this bill. It unfairly punishes victims of discrimination. As you know, the Alaska State Commission for Human Rights is backlogged well over 90 days on cases due to severe cutbacks in staffing over the last 10 years. The City and Borough of Juneau Human Rights Commission was established by the Juneau Assembly in 1992, partly in response to the closure of the Juneau office of the State Human Rights Commission. The Juneau Human Rights Commission has two primary functions: educating the community about the sources and effects of abrogations of human rights, and investigating and intervening on behalf of community members who request our assistance. In fulfilling the second function, we refer numerous complainants to the State Human Rights Commission. We feel strongly that HB 468 unfairly punishes victims of discrimination by limiting back pay awards to which they would be legally entitled because of unlawful discrimination.

Thank you for your attention to this matter. If you have questions, please contact the Commission Chair, Leslie Longenbaugh, at 586-1400.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB468

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title "An Act relating to damages... before the State Commission for Human Rights" BRU Commissions/Special Offices
 Component Human Rights Commission
 Sponsor House Rules Committee
 Requester House State Affairs Component Serial No. 01

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	4,592.6	2,725.3	2,725.3	2,579.1	2,579.1	2,579.1
Travel	54.0	54.0	54.0	54.0	54.0	54.0
Contractual	191.3	191.3	197.0	197.0	202.9	202.9
Supplies	26.4	26.4	26.4	26.4	26.4	26.4
Equipment	286.8	10.0	10.0	10.0	10.0	10.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	5,151.1	3,007.0	3,012.7	2,866.5	2,872.4	2,872.4

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5,151.1	3,007.0	3,012.7	2,866.5	2,872.4	2,872.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	5,151.1	3,007.0	3,012.7	2,866.5	2,872.4	2,872.4

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	55	35	35	24	24	24
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

An increase in the number of personnel and other line item funding will be necessary to process cases in ninety (90) days as required by this bill. Initially 55 positions would be added to the agency to clear its backlog of cases. In the following years, the number of additional positions would decrease. However, in order to process cases in ninety (90) days, a permanent increase in staff will be needed.

Prepared by: Paula M. Haley Paula M. Haley, Executive Director Phone 276-7474
 Division HUMAN RIGHTS COMMISSION Date 3/18/98
 Approved by: Jim Ayers, Chief of Staff Date _____
 Agency Office of the Governor

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Alaska State Legislature

CHAIR:
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JEANNETTE JAMES

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House of Representatives
HOUSE STATE AFFAIRS

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KIM ELTON
ETHAN BERKOWITZ

Fiscal notes for the following bills were requested via email on 3/12/98.

None had been received as of noon on 3/18/98.

Subject: fiscal notes
Author: Barbara_Cotting@legis.state.ak.us ("Barbara Cotting") at CC2MHS1
Date: 3/12/98 12:55 PM

I need fiscal notes for the following bills which are scheduled in House State Affairs for Thursday, March 19, 1998:

HB 463	Establish Alaska Public Building Fund
HB 466	Campaign Misconduct: False Information
HB 468	Damage Awards Human Rights Commission
HB 408	Seismic hazards Safety Commission
SB 307	U.S. Senate Vacancies