

September 11, 2018 Publication

Topics

Employment Law

Related People

Peter C. Partnow
partnowp@lanepowell.com

Related Practices & Industries

Business
Labor, Employment & Benefits
Litigation

Alaska State Commission for Human Rights Limits Right of Alaska Employers to Have Representative Attend Investigative Interviews

Labor, Employment & Benefits Legal Update

Th
e
Ala
ska
Sta
te
Co
m
mis
sio
n
for
Hu
ma
n

Rig
hts
(AS
CH
R)
has
ha
d a
lon
g-
sta
ndi
ng
pra
ctic
e of
for
bid
din
g
em
plo
yer
s
fro
m
hav
ing
a
rep
res
ent
ativ
e
pre
sen
t
wh
en
an

AS
CH
R
inv
esti
gat
or
int
ervi
ew
ed
no
n-
ma
na
ger
ial
em
plo
yee
s
reg
ard
ing
dis
cri
mi
nat
ion
co
mp
lain
ts,
but
allo
win
g
the
co
mp

any
's
att
orn
ey
to
sit
in
wh
en
sup
ervi
sor
s or
ma
na
ger
are
int
ervi
ew
ed.

In a
just
iss
ue
d
opi
nio
n
(Al
ask
a
Sta
te
Co
m
mis
sio

n
for
Hu
ma
n
Rig
hts
v.
An
der
son
, O
pin
ion
No.
728
0,
Au
gus
t
31,
201
8),
the
Ala
ska
Su
pre
me
Co
urt
up
hel
d
this
pas
t
pra
ctic
e

even though although not specifically authorized by law.
The court's decision is based largely on the statutory requirements.

tha
t
inv
esti
gat
ion
s
mu
st
be
kep
t
co
nfi
de
nti
al.
Th
e
co
urt
rea
son
ed
tha
t
hav
ing
a
thir
d
par
ty
pre
sen
t in
an
“inf
or
ma

l
int
ervi
ew
”
mi
ght
chil
l
the
wit
nes
s
fro
m
pro
vidi
ng
co
mp
let
e,
trut
hfu
l
inf
or
ma
tio
n.

Fro
m
the
em
plo
yer’
s
per
spe

ctiv
e,
the
go
al
of
par
tici
pat
ing
in
the
inv
esti
gat
ive
int
ervi
ew
sho
uld
not
be
to
chil
l
the
wit
nes
s,
but
rat
her
to
kn
ow
pre
cis
ely
wh

at
co
nd
uct
is
bei
ng
alle
ge
d.
Thi
s
per
mit
s
the
em
plo
yer
to
res
olv
e
co
mp
lain
ts
qui
ckl
y
an
d
inf
or
ma
lly
if it
ap
pe
ars

dis
cri
mi
nat
ory
co
nd
uct
ma
y
hav
e
occ
urr
ed,
or
to
gat
her
ap
pro
pri
ate
fac
tua
l
inf
or
ma
tio
n
to
ad
dre
ss
alle
gat
ion
s of
whi

ch
the
em
plo
yer
mi
ght
oth
erw
ise
be
un
aw
are
.
Th
e
co
urt'
s
ruli
ng,
ho
we
ver,
evi
de
nce
s a
jud
icia
l
co
nce
rn
tha
t
co
nfi
de

nti
alit
y
req
uir
em
ent
s
out
wei
gh
the
em
plo
yer'
s
nee
d
to
kn
ow.

*Thr
ee
Key
Tak
ea
wa
ys
Fro
m
Thi
s
Dec
isio
n:*

1. |
x
p

e
c
t
n
e
w

r
e
s
t
r
i
c
t
i
o
n
s
o
n

w
h
o

m
a
y
s
i
t
i
n

o
n

A
S

C
H
R

i
n
t
e
r
v
i
e
w
s

.
T
h
e
c
o
u
r
t
o
p
i
n
e
s
i
t
i
s
a
l
l
o
w
i
n
g

A
S
C
H
R
,
s
l
o
n
g
-
s
t
a
n
d
i
n
g
,
b
u
t
u
n
w
r
i
t
t
e
n
,
p
a
s
t
p
r

a
c
t
i
c
e
.
H
o
w
e
v
e
r
,
t
h
e
o
p
i
n
i
o
n

m
a
y
s
i
g
n
i
f
y
a
f
u
r
t

h
e
r
r
e
s
t
r
i
c
t
i
o
n

o
n

e
m
p
l
o
y
e
r
s
.
H
i
s
t
o
r
i
c
a
l
l
y
.

A
S
C
H
R

h
a
s
a
ll
o
w
e
d

a
s
u
p
e
r
v
i
s
o
r
,
m
a
n
a
g
e
r
o
r
a
t
t

o
r
n
e
y
t
o

a
t
t
e
n
d

i
n
t
e
r
v
i
e
w
s
o
f
m
a
n
a
g
e
r
s
a
n
d

s

u
p
e
r
v
i
s
o
r
s
·
l
n

t
h
e
r
e
c
e
n
t
d
e
c
i
s
i
o
n
,
e
v
e
n

t
h
o

u
g
h

t
h
e
p
r
o
p
o
s
e
d

e
m
p
l
o
y
e
r
r
e
p
r
e
s
e
n
t
a
t
i
v
e
i
s

i
d
e
n
t
i
f
i
e
d

a
s
a
“
s
u
p
e
r
v
i
s
o
r
,”

A
S
C
H
R

t
o
o
k
t
h
e
p

o
s
i
t
i
o
n

t
h
a
t
t
h
e
s
u
p
e
r
v
i
s
o
r
w
a
s
“
n
o
t
a
h
i
g
h
-
l
e

v
e
l
m
a
n
a
g
e
r
”
a
n
d

t
h
u
s
c
o
u
l
d

n
o
t
a
t
t
e
n
d

t
h
e
i
n

v
e
s
t
i
g
a
t
i
v
e
i
n
t
e
r
v
i
e
w
.
T
h
e
c
o
u
r
t
u
p
h
e
l
d

A
S
C
H

R
,
s
p
o
s
i
t
i
o
n
.
T
h
u
s
A
S
C
H
R

m
a
y
b
e
f
u
r
t
h
e
r
r
e
s
t
r
i

c
t
i
n
g
w
h
o

i
t
w
il
l
a
ll
o
w

t
o

s
i
t
i
n

o
n

i
n
v
e
s
t
i
g
a

t
i
v
e
i
n
t
e
r
v
i
e
w
s
o
f
c
o
-
w
o
r
k
e
r
s
i
n

d
i
s
c
r
i
m
i
n
a
t

i
o
n

c
a
s
e
s
.

2. |
m
p
l
o
v
e
r
'
-
s
a
t
t
o
r
n
e
v
m
a
v
l
i
k
e
l
v
s
t
il

l
a
t
t
e
n
d

m
a
n
a
g
e
m
e
n
t
i
n
t
e
r
v
i
e
w
s

·
A
S
C
H
R
,
s
p
a
s
t

p
r
a
c
t
i
c
e
,
a
s
r
e
c
o
g
n
i
z
e
d

b
y
t
h
e
c
o
u
r
t
,
h
a
s
a
l
l
o
w

e
d

w
i
t
n
e
s
s
e
s
t
o

b
e
a
c
c
o
m
p
a
n
i
e
d

b
y
“
t
h
e
i
r
o
w
n

a
t
t
o
r
n
e
y
s
..
”
I
n

t
h
i
s
c
a
s
e
,
A
S
C
H
R

t
o
o
k
t
h
e
p
o
s

i
t
i
o
n

t
h
a
t
“

w
i
t
n
e
s
s
e
s
a
r
e
n
o
t
e
n
t
i
t
l
e
d

t
o

r
e

p
r
e
s
e
n
t
a
t
i
o
n
,
w
h
e
t
h
e
r
b
y
c
o
u
n
s
e
l
o
r
o
t
h
e
r
w
i
s
e

,
a
b
s
e
n
t
s
o
m
e
e
a
f
fi
r
m
a
t
i
v
e
r
i
g
h
t
c
o
n
f
e
r
r
e
d

b
y
l
a

w
.
”
S
i
n
c
e
t
h
e
e
m
p
l
o
y
e
r
i
n

t
h
i
s
c
a
s
e
d
i
d

n
o
t
a
t
t

e
m
p
t
t
o

h
a
v
e
a
n

a
t
t
o
r
n
e
y
p
r
e
s
e
n
t
a
t
t
h
e
i
n
t
e
r
v

i
e
w
,
t
h
i
s
p
o
t
e
n
t
i
a
l
c
o
n
fl
i
c
t
i
s
n
o
t
s
p
e
c
if
i
c
a
ll
y
a

d
d
r
e
s
s
e
d

b
y
t
h
e
c
o
u
r
t

.
H
o
w
e
v
e
r
,
i
t
a
p
p
e
a
r
s
e
m
p

l
o
y
e
r
s
w
il
l
m
o
s
t
li
k
e
l
y
b
e
p
e
r
m
i
t
t
e
d

t
o

h
a
v
e
a
r
e

p
r
e
s
e
n
t
a
t
i
v
e
a
t
t
e
n
d

i
n
v
e
s
t
i
g
a
t
i
v
e
i
n
t
e
r
v
i
e

w
s
o
f
s
u
p
e
r
v
i
s
o
r
s
o
r
m
a
n
a
g
e
r
s
i
f
t
h
e
r
e
p
r
e
s
e
n
t
a

t
i
v
e
i
s
t
h
e
e
m
p
l
o
y
e
r
,
s
a
t
t
o
r
n
e
y
.

3. |
m
p
l
o
v
e
r
r
e
p

r
e
s
e
n
t
a
t
i
v
e
l
i
k
e
l
y
m
a
y
a
t
t
e
n
d

n
o
n
-
m
a
n
a
g
e
m
e
n
t

i
n
t
e
r
v
i
e
w
s
i
f
t
h
e
w
i
t
n
e
s
s
r
e
t
a
i
n
s
t
h
e
a
t
t
o
r
n
e
y
a

s
h
i
s
/
h
e
r
o
w
n
.
T
h
e
c
o
u
r
t
,
s
o
p
i
n
i
o
n

s
e
e
m
s
t
o

l
e

a
v
e
o
p
e
n

t
h
e
a
p
p
r
o
a
c
h

t
h
a
t
h
a
s
b
e
e
n

p
u
r
s
u
e
d

i
n

t
h
e
p
a
s
t
o
f
p
e
r
m
i
t
t
i
n
g
a
t
t
e
n
d
a
n
c
e
b
y
t
h
e
e
m
p

l
o
y
e
r
,
s
a
t
t
o
r
n
e
y
a
t
t
i
n
t
e
r
v
i
e
w
s
e
v
e
n

o
f
n
o
n
-
m
a

n
a
g
e
r
i
a
l
e
m
p
l
o
y
e
e
s
w
h
e
r
e
s
u
c
h

e
m
p
l
o
y
e
e
s
r
e
q
u

e
s
t
t
o

h
a
v
e
t
h
e
e
m
p
l
o
y
e
r
,

s
a
t
t
o
r
n
e
y
p
r
e
s
e
n
t
a
n

d

i

t

i

s

a

g

r

e

e

d

t

h

e

a

t

t

o

r

n

e

y

i

s

r

e

p

r

e

s

e

n

t

i

n

g

t

h

e
i
n
d
i
v
i
d
u
a
l
a
s
w
e
ll
a
s
t
h
e
e
m
p
l
o
y
e
r
.

4. t
a
v
t
u
n
e
d

f
o
r
m
o
r
e
e
g
u
i
d
a
n
c
e
.
T
h
e
A
S
C
H
R

p
l
a
n
s
t
o

p
u
b
l
i
s
h

d
r
a
f
t
a
d
m
i
n
i
s
t
r
a
t
i
v
e
r
e
g
u
l
a
t
i
o
n
s
s
e
t
t
i
n
g
f
o

r
t
h

i
t
s
p
o
l
i
c
y
o
n

a
t
t
e
n
d
a
n
c
e
a
t
t
i
n
v
e
s
t
i
g
a
t
i
v
e

i
n
t
e
r
v
i
e
w
s
.
E
m
p
l
o
y
e
r
s
s
h
o
u
l
d

k
e
e
p

a
l
l
o
o
k
o
u
t

f
o
r
t
h
e
n
o
t
i
c
e
o
f
r
u
l
e
m
a
k
i
n
g
a
n
d

b
e
p
r
e
p
a
r
e
d

t

o

c
o
m
m
e
n
t
o
n

t
h
e
p
r
o
p
o
s
e
d

r
e
g
u
l
a
t
i
o
n
s
a
s
m
a
y

a
p
p
e
a
r
a
p
p
r
o
p
r
i
a
t
e
.