

Confidential Status under the Public Employment Relations Act (PERA)

The Rule:

Under 8 AAC 97.990 (a)(1) a confidential employee means **an employee who assists and acts** in a confidential capacity to **a person who formulates, determines, and effectuates** management policies **in labor relations matters**.

Are employees who handle generally defined confidential information confidential employees?

No. Confidential status is reviewed for its sensitivity to collective bargaining issues and not its work involving personal rights to privacy or confidentiality. *Alaska State Emp's. Ass'n v. State*, Order and Decision No. 118 (April 21, 1989). And, defining confidential status under PERA must be narrowly construed. *Id.*

Must the collective bargaining data handled be specific to the incumbent union?

No. The confidential employee regulation does not distinguish between which union relations are involved in the area of collective bargaining. Thus, the position was moved to the confidential unit even though the work involved collection of collective bargaining data for a different union than the one the employee belonged to. *Alaska State Emp's Ass'n v. State*, Order and Decision No. 122 (SLRA August 29, 1989).

How much time must be spent handling confidential information to qualify as a confidential employee?

Any assistance qualifies. Any assistance to one who acts in policy formulation or implementation under the rule is sufficient. The Accounting Technician I was moved into the confidential unit. *State v. Alaska State Emp's Ass'n*, Decision and Order No. 132A (ALRA Oct. 29, 1991).

Which Board decisions resulted in non-confidential status?

Three Accounting Clerk II positions and one Accounting Technician I were not moved from the confidential unit because they were appropriately placed in the general unit. *State v. Alaska State Emp's Ass'n*, Decision and Order No. 132 (ALRA June 13, 1991). Later, the Agency reconsidered its position and decided that any assistance to one who acts in policy formulation or implementation is sufficient and moved the Accounting Tech I into the confidential unit. *State v. Alaska State Emp's Ass'n*, Decision and Order No. 132A (ALRA October 29, 1991).

Police Chief is not a confidential employee because he does not assist the City Manager with contract administration and he does not otherwise act or assist in a confidential capacity anyone else who formulates, determines, and effectuates management policies in labor relations matters. *City of Seldovia v. Int'l Brotherhood of Electrical Workers, Local 1547*, Decision and Order No. 280 (ALRA May 19, 2006).

Clerk II and Payroll Supervisor were denied movement into the confidential unit because they did not meet the definition of confidential employee. *State DOA v. Alaska Public Emp's Ass'n*, Order and Decision No. 32 (SLRA Jan. 23, 1978).

Where workers in the word processing unit no longer worked in the labor relations section of the Division of Personnel, due to an organizational restructuring, and they no longer had access to labor

relations matters, the positions were moved to the general unit. *State DOA v. Confidential Emp's Ass'n*, Order and Decision No. 44 (SLRA May 5, 1979).

Which Board decisions resulted in confidential status?

Where the Executive Secretary to the Superintendent acts in a confidential capacity to the Superintendent, who formulates, determines, and effectuates management policies in the area of collective bargaining, the Secretary was excluded from the general bargaining unit at the Alaska Gateway School District. *Alaska Gateway Ed. Support Personnel v. Alaska Gateway School Dist.*, Decision and Order No. 154 (ALRA Feb. 26, 1993).

The Agency denied transferring two Accounting Clerk II positions, one Accounting Technician I, and one Accounting Clerk II position from the general unit to the confidential unit. In DO 132A, the Agency reconsidered its position and decided that any assistance to one who acts in a policy formulation or implementation is sufficient and moved the Accounting Technician I into the confidential unit. *State v. Alaska State Emp's Ass'n*, Decision and Order No. 132A (ALRA October 29, 1991).

Four positions including three Accounting Clerks and one Accounting Technician were moved to the confidential unit because they gather information to support collective bargaining and their duties included processing payroll, handling other confidential documents, personnel action forms, grievances, and handling data in support of collective bargaining negotiations. *Alaska State Emp's Ass'n v. State*, Order and Decision No. 118 (SLRA April 21, 1989).

Assistant Finance Director is a confidential employee because the position assists and/or acts in a confidential capacity to the City Manager in matters pertaining to collective bargaining management policies. *Alaska Public Emp's Ass'n v. City of Fairbanks*, (DOLLRA March 24, 1988).

A Clerk IV who assists and acts in a confidential capacity to a Personnel Officer who formulates, determines, and effectuates management policies in labor relations matters is a confidential employee. *Alaska State Emp's Ass'n v. State*, Decision and Order No. 166 (ALRA Sept. 28, 1993).