

Supervisory status under the Public Employment Relations Act (PERA)

The Rule:

Under 8 AAC 97.990(a)(5) a supervisory employee is one who, regardless of job description or title, has authority **to act or to effectively recommend** action in the interest of the public employer **in any one of the following supervisory functions**, if the exercise of that authority is not merely routine but **requires the exercise of independent judgment**:

- (A) **employing**, including hiring, transferring, laying off, or recalling;
- (B) **discipline**, including suspending, discharging, demoting, or issuing written warnings; or
- (C) **grievance adjudication**, including responding to a first level grievance under a collective bargaining agreement.

What does it mean to act or effectively recommend in the employ function?

The language “to act or effectively recommend” pertains to the actual possession of supervisory authority, not whether the supervisor has exercised it. *State DOTPF v. Alaska State Emp’s. Ass’n*, D&O No. 219 at 46. The employee who actually conducts interviews, checks applicants' references, and decides which applicant has the best skills for the job exercises significant discretion and authority in the employer's interest in the employing function. In contrast, sufficient authority to employ under 8 AAC 97.990(a)(5) would not exist if an employee merely conducted preliminary interviews for a supervisor and the supervisor then decided which applicant to hire. *Id.*

What does it mean to act or effectively recommend in the discipline function?

An employee who investigates a disciplinary matter, consults personnel in the human resource office, and decides what discipline to impose after being advised of options by the human resource professional exercises sufficient discretion in the discipline function to meet the requirements of the regulation. On the other hand, if an employee were to investigate a disciplinary matter and report the findings to the supervisor, and the supervisor then decided what action to take, the employee would not exercise sufficient discretion in the discipline function. *Id.* at 49.

How much time or function of the position is required to move the position supervisory?

There is no requirement that the position spend a majority of its time performing supervisory functions. *State DNR v. Alaska State Emps. Assn.*, D&O No. 194. However, intermittent supervisory duties, limited to periods when the director is absent are insufficient to make an individual a supervisory employee under 8 AAC 97.990(a)(5). *Laborers Local 341 & Operating Engineers 302, AFL-CIO v. City of Whittier*, Decision and Order No. 242 (Mar 3, 1999). Actual exercise of supervisory authority in one of the functions is not required if the opportunity has not arisen. The test is whether the supervisory authority has been conferred. *State v. Alaska State Emps. Assn.*, D&O No. 219 at 56.

How many employees must be supervised to make a position a supervisor?

The number of employees supervised is not relevant; one subordinate is sufficient. *State v. Alaska State Emps. Assn.*, Decision and order No. 196 (Oct. 19, 1995)(aff'd by superior court).

Is supervisory status established when a position supervises contractors or other positions that are employees of another entity?

No. The Board declined to place a State employee (technical engineer II/architect II) in the supervisory unit where the position supervises non-state employees including contract workers, consultants, and a University of Alaska student. *State DOTPF v. Alaska State Emps. Assn.*, Decision and Order No. 198 (ALRA Nov. 15, 1995) (aff'd by superior court). *See also Alaska State Emps. Assn. v. State DNR*, Decision and Order No. 232 (ALRA Aug. 13, 1997)(supervision of federal employees by a state employee is not relevant to determining supervisory status, except as to how it helps show or prove the level of supervisory authority exercised over state employees.)

Does participation on a hiring committee qualify a position as a supervisor?

No. The Agency determined that participation on a hiring committee did not qualify an individual as having authority to act or recommend action in one of the three supervisory functions. But, in this case, the employee independently decided to form a hiring committee, his supervisor was not on it, he chose the other members, he prepared the questions to be asked, and he retained decision-making authority himself. Thus, these activities demonstrated sufficient exercise of independent judgment under the rule to establish supervisory status. *Alaska State Emps Assn., v. State DOTPF*, Decision and Order No. 238 (Aug. 20, 1998).

Practical Tip:

To distinguish non-supervisor leads/mid-level managers from supervisors, the State of Alaska Department of Personnel, Classification Services has established this guideline. This is not an Alaska Labor Relations Agency definition, and it is offered as a practical resource. Positions identified as leads would be placed in the general/non-supervisory unit.

A lead is defined as “A position assigned regular and recurring responsibility for common supervisory duties such as writing performance evaluations, mentoring, training, determining how work is performed, assigning work, and monitoring workloads. Lead employees may participate in interviews and rating applicants but don’t typically exercise the level of authority to act or effectively recommend actions regarding hiring, discipline, or grievance adjudication as assigned to full Supervisory staff defined by 8 AAC 97.990(a)(5).