

ALASKA STATE LEGISLATURE



27 November 2018

The Honorable Mike Dunleavy
Governor-elect of the State of Alaska
3rd Floor, State Capitol
Juneau, AK 99811

Dear Mr. Dunleavy,

You recently requested resignations from all current at-will State of Alaska employees, with the stated objective to maintain the employment of only those who “want to work on” your administration’s “agenda.” The employees will be terminated unless they express “a positive desire” to serve the Dunleavy administration through an affirmative statement in writing. We believe your policy is ill-considered, and we call on you to reverse course on it immediately.

We certainly recognize your right to seek the resignations of those state employees whose positions are more policy-oriented in nature—department commissioners, directors, executive staff, and the like. However, your resignation demand goes far beyond that. The state employees whose resignations you have demanded are professionals with specialized education, training, and skill sets—and years of experience. Among the employees from whom you’ve sought resignations are medical doctors, psychiatrists, pharmacists, fiscal analysts, state tax code specialists, investment managers, petroleum geologists, trust managers, accountants, research analysts, IT professionals, loan officers, military & veterans affairs coordinators, marine transportation managers, administrative law judges, and state attorneys presently working on behalf of the public on important and complicated legal issues, including prosecutors on criminal cases.

The functions of these employees are not political. They serve the state’s needs and its greater good. These individuals swear an oath to uphold and defend the U.S. and Alaska Constitutions, not a pledge to support any particular state chief executive. We do not believe they should feel intimidated into specific allegiance to the Dunleavy administration. Whether or not you intended it, your policy effects a demonstration of loyalty, and only then through economic coercion and a risk of negative impacts to one’s professional career. These employees are now faced with unwarranted personal uncertainty; they only know that their best chance of preserving their current employment and their livelihoods is through attesting their strong desire to serve you.

While you’ve acknowledged that you’ve “broadened the scope” from the typical set of public servants who are asked to resign by an incoming administration, you’ve suggested this move is yet “customary.” Your request is far from customary. On Friday November 16, the day you issued your policy memorandum, your transition chairman and incoming chief-of-staff stated to media that he did not know the number of exempt and partially exempt at-will employees who received the memo, but

indicated he believed it to be over 400. In time, we have learned the number is in excess of 1,200 employees. By comparison, Governor Walker's similar resignation request affected only about 250 employees.

Your resignation demand implicates several serious additional concerns. Public employees are citizens with First Amendment rights, but your resignation and rehire policy tends to effect a chill to their freedom of speech and freedom of association. We hope and anticipate that none of these public servants will experience loss of his or her job due to past or present political affiliation or other activities. We further hope and expect that your administration will continue to respect the freedoms and diverse perspectives of those serving in these state positions in non-political roles, whose sole focus is to work to improve the state and the lives of the people of Alaska.

While you sort through your hiring decisions, in the meantime, your resignation policy will continue to leave employees with anxiety and poor morale, which unsurprisingly detracts the state. If every incoming administration were to take this same posture with respect to our at-will employees—every four or eight years—we imagine the instability to our workforce that would result. This is certainly not the behavior one would ever expect in the private sector—wholesale resignation demands anytime a new chief executive takes the helm. The uncertainty employees would feel would cause many of our highly skilled, specially trained personnel to seek employment elsewhere, even out of state. Disruption and discontinuity to our projects and programs harm Alaska.

Your action also raises other significant questions. It's been observed in the media that when a state employee is terminated—even for just one day—that person's accrued leave balance must be "cashed out." As of November 19, the present value of cashing out the 1224 state employees' leave was \$20,755,631. Even if some or most of these employees end up staying with the State, if some or many are in fact terminated, or they decide to leave based on perceived insecurity as a result of your policy, this could result in large leave payouts that the State may not have anticipated, especially in its present fiscal circumstances. What provisions have you made in anticipation of these leave payouts?

What will be the unemployment benefits eligibility status of state employees affected by your policy who lose their jobs as a consequence? Alaska Statute 23.20.379 provides that an insured worker is disqualified for unemployment benefits for up to the initial six weeks when the worker "left [his or her] last suitable work voluntarily without good cause." It's possible that your resignation requirement could be construed by a court as a "voluntary" departure, because the end of state service would be based first on the employee's submitted resignation, then your acceptance. In fact, even the employee's decision *not to submit* a resignation could be deemed a "voluntary" departure, because as your transition chair has forewarned, where an employee does not submit one, then "you've let us know you just wish to be terminated." In light of this notice, the employ who elects to forego an *attempt* to keep his or her job may well be considered to have quit.

At any rate, your resignation policy may subject the State to legal action in this regard, even a class action. And employees presently uncertain of their continued state service are undoubtedly weighing the possible outcomes extending from your policy against what may be best for their families in the long-run, and pursuing unemployment benefits is likely on their minds.

Further troubling is that you are requiring employees to resign to a State email address, Team2018@alaska.gov, but for rehire, to submit their application materials online at a private website, www.governormikedunleavy.com. We question whether this private website—which uses a private Lower-48 corporation to collect our state employees' information—provides a proper, legal venue for

receipt of such submissions for official State business. Will actions taken via your private website allow legally mandated transparency? Will legitimate future requests for documents under the Freedom of Information Act and the Alaska Public Records Act be honored? Will the information collected on this website regarding state employees be used for any purposes other than to assess their hiring?

We also question whether the privacy and security features of your website align with State of Alaska policies for handling such applicant information. The State's web use policy explains it is "committed to protecting visitor privacy and developing technology" to provide "a safe and secure online experience," and that it has "appropriate security measures in place to protect against the loss, misuse, or alteration of information that has been collected from visitors." On the other hand, your private website expresses outright that an applicant's personal information *could be disclosed* to entities like "subsidiaries and affiliates" of the private hosting company, and to "contractors, service providers and other third parties." This company also establishes that it has no liability for accidental loss of personal data, as it "cannot guarantee the security of [an applicant's] personal information"; "transmission of personal information is at [the user's] own risk." Your hiring practices therefore force applicants to choose between applying for rehire, or ensuring the security of their private information, and we wonder whether the use of this private site violates State privacy and security policies in any event.

Concerning hiring procedures, is your approach commensurate with State policies or best hiring practices? For instance, your memo advises employees that they may re-seek their present posts or "another appointment-based state position," which suggests that opening positions may not or will not be advertised to the public before filled. We do not see this as sound government hiring process. Alaskans should be afforded the opportunity to review and apply for open government service positions for which they may be better qualified, rather than hiring only those already in the system who are aware of existing positions and who have crafted persuasive statements of interest for you. In addition, we understand that for many of the affected at-will positions, hiring procedures had previously been followed that included review by human resource agents for application component completeness, for minimum qualifications and training, for nepotism concerns, and for equal opportunity enforcement, as well as hiring panels who deliberated on candidate selection and conducted interviews. Such good practices lead to selection of fit public servants and allows the State to maintain accurate and complete records of hiring decisions.

We are additionally troubled by the public safety implications of your action. Aside from further damaging the morale of our state attorneys, summarily terminating prosecutors in the midst of legal matters and court process could result in more criminals being set free and inexperienced attorneys being forced to litigate cases.

Based on the foregoing concerns and outstanding questions, we ask that you immediately rescind your blanket request for resignations from all at-will state employees. A better approach would be to allow these employees to continue their duties and commitment to the State of Alaska during your administration, and if or when an employee appears—in your competent judgment—to inadequately serve Alaska's best interests in his or her assigned role, then termination would be an appropriate action.

Sincerely,



Senator Bill Wielechowski



Senator Tom Begich



Senator Donny Olson



Senator-elect Elvi Gray-Jackson



Senator-elect Jesse Kiehl



Representative Matt Claman



Representative Les Gara



Representative David Guttenberg



Representative Scott Kawasaki



Representative Chris Tuck