



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
DIRECTIVE**

**DIRECTIVE NUMBER
225
DISTRIBUTION DATE
August 8, 2007**

1. **SUBJECT: COMPLAINTS ON DISCRIMINATORY EMPLOYMENT
NEWSPAPER ADVERTISEMENTS**
2. **PURPOSE:** To set forth the procedures for accepting complaints that allege the publication of discriminatory employment advertisements.
3. **BACKGROUND:** The Fair Employment and Housing Act (FEHA), section 12940, subdivision (d), prohibits employers from printing or circulating or causing to be printed or circulated in any publication any discriminatory preference or limitation based on race, religious creed, color, national origin, ancestry, physical disability (including AIDS), mental disability, medical condition (cancer or genetic characteristics), marital status, sex (including pregnancy), age (over 40), sexual orientation or because of family care leave or leave for an employee's own serious health condition. The regulations of the Fair Employment and Housing Commission (FEHC), California Code of Regulations, Title 2, section 7287.3, subdivision (a), prohibit an employer or other covered entity from engaging in any recruitment activity which communicates, or uses advertising methods to communicate the availability of employment benefits in a manner intended to discriminate on a basis enumerated in the Act.

The following procedures explain how such cases are to be processed.

(NOTE: For guidance on discriminatory housing advertising, refer to Housing Directive H-210, "Publication of Discriminatory Advertisements").

4. **PROCEDURES:**
 - A. **Complainants Alleging Discriminatory Employment Advertising at Intake:**

Where a complainant alleges that he/she was denied an interview or selection for a position and cites discriminatory advertising for the position, the Consultant should proceed as follows:

- 1) Where a direct link between the unlawful advertisement and the non-selection for the position can be made, a complaint should be taken against the employer and a **separate** complaint should be taken against the newspaper for aiding and abetting in the discrimination.

EXAMPLE: Complainant, a 70-year-old male, is denied consideration for an available position of Truck Driver for which he has numerous years of experience. The newspaper advertisement for the position states that the company wants young drivers. Separate complaints should be taken against the employer and the newspaper.

- 2) Separate complaints should be taken against employers and newspapers in those instances where complainants allege the existence of an unlawful advertisement that had a "chilling effect" that discouraged them from applying for a position for which they were otherwise qualified.

EXAMPLE: Complainant, a male, wishes to complain about a newspaper advertisement which states the employer wants a female head waiter. Complainant is qualified for the position, but does not apply for the position because of the reference to "female headwaiter."

- 3) In situations where a complainant is complaining only about the advertisement and is not qualified or not interested in the position, the District Administrator shall be contacted prior to accepting the complaint. He/she will consult with the assigned attorney as to how the matters will be handled.
- 4) In instances where the District Administrator, with the concurrence of the assigned attorney, determines that a complaint for investigation will not be taken, the complainant will be offered the opportunity to file a "b" complaint ("complaint taken for filing purposes only"). (Refer to Directive 228, "Complaints Where One or More of the Allegations or Parties Are Rejected for Investigation.")
- 5) In instances where neither a complaint for investigation nor a "b" complaint is taken, the information will be routed to the District Administrator. Complainants will be advised that no individual complaint for investigation will be taken and informed that their concerns will be forwarded to the District Administrator for possible further action. The District Administrator will proceed as described below.

B. Unlawful Newspaper Advertisements Where There Is No Complainant:

When an unlawful employment related newspaper advertisement is brought to the attention of the Department and there is no aggrieved party to file a formal complaint, such as an anonymous inquiry, or a decision

was made not to take a complaint for investigation or filing, the following procedures will be followed:

- 1) The District Administrator will attempt to resolve the matter in an informal fashion. A letter will be sent to both the newspaper and the employer stating the specifics of the unlawful acts and requesting voluntary compliance. If the newspaper and/or employer complies with the request, no further action will be required.
- 2) Where the newspaper and/or employer refuse to comply with the request, the case will be referred to the appropriate Regional Administrator. The Regional Administrator will attempt to achieve voluntary compliance through a letter to the newspaper and/or employer. If there is compliance with the request, no further action will be required.

C. Director's Complaints Arising From Unlawful Newspaper Advertisements:

- 1) Where a newspaper and/or employer refuse to comply with the Department's request to voluntarily change its discriminatory practice(s), the Regional Administrator will decide whether to recommend a Director's Complaint.
- 2) Where a decision is made to recommend a Director's Complaint, the pre-complaint information will be returned to the District Administrator. The information will be processed in accordance with the procedures described in Directive 222, "Director's Complaints."
- 3) Where a decision is made not to proceed with a Director's Complaint, the Regional Administrator will advise the District Administrator in writing of the reasons for not proceeding.

5. APPROVAL:

Wanda J. Kirby, Acting Director

Date