

C. Chief Counsel Opinions:

Chief Counsel Opinions are interpretations of both magnitude and significance. They are usually reserved for critical issues of first impression that have policy implications and jurisdiction. They are written in a specified format, distributed to designated staff, and disseminated to entities outside of the Department.

5. PROCEDURES:

A. Legal Questions:

- 1) Consultants who believe legal advice is needed should confer with their District Administrator to ensure that the legal question cannot be answered using existing case processing tools (e.g., FEHA, Commission Regulations, Directives, Legal Interpretations, Chief Counsel Opinions, etc.).
- 2) If the District Administrator concurs that legal advice is needed, he/she shall make the request orally. All requests will be made to the assigned attorney who will respond orally. If the assigned attorney determines that the issue requires extensive research, the attorney may request that the question be submitted in writing and forwarded to the Chief Counsel for assignment as a formal Legal Opinion.

B. Legal Opinions:

- 1) Anyone in the Enforcement Division may generate a request for a Legal Opinion. The District Administrator's approval must be obtained prior to its submission to the Legal Division.
- 2) The District Administrator will prepare a written memorandum, which includes the question posed and a brief summary of all pertinent facts and background.
- 3) The memorandum and case file should be forwarded to the Chief Counsel and accompanied by an appropriately completed transmittal form.
- 4) The Chief Counsel will assign the request to an attorney for completion within a reasonable period of time, but no later than 30 days from the date of receipt by the attorney.

- 5) If the need for a legal opinion is eliminated while the request is pending in Legal, the District Office will promptly notify the attorney who will promptly return the file.
- 6) The attorney will prepare a written legal opinion for the District Office identifying the issue, facts, analysis, and conclusion with appropriate citations to legal authority. Copies of the opinion will be provided to the Deputy Director Enforcement Division and all Regional Administrators. The opinion will be marked "CONFIDENTIAL - ATTORNEY-CLIENT PRIVILEGE" and will be filed in the "Confidential" section of the case file.
- 7) The District Office staff should refrain from informing the parties to the complaint that the case has been referred to Legal for the purpose of a legal opinion, that a written legal opinion exists, or the contents of the legal opinion, unless necessary.
- 8) Written legal opinions are not to be disclosed to the parties, pursuant to Directive 600, "Disclosure of Information from DFEH."

C. Chief Counsel's Opinions:

Anyone in either the Legal Division or Enforcement Division may request the issuance of a Chief Counsel's Opinion. Such requests are subject to approval and will be made to the Chief Counsel or the Deputy Director Enforcement Division, through normal supervisory channels.

- 1) When a Chief Counsel's Opinion is issued, it will be issued to all Legal and Enforcement staff, to be filed in the "Legal Interpretations/Chief Counsel Opinions" Manual maintained in each Legal Office, District Office, Regional Office, and Enforcement Division Headquarters Office. The Manual is subject to disclosure under the Public Records Act.
- 2) The Opinion will be prepared in the proper format on the "Chief Counsel Opinion" letterhead.
- 3) The Opinion will be forwarded to the Deputy Director Enforcement Division for review and input. Final approval will be given by the Director.

- 4) The approved original opinion, with a distribution cover memorandum (including instructions for the appropriate index entries), will be forwarded to the office of the Deputy Director Enforcement Division (Headquarters) for reproduction and distribution.

6. **APPROVAL:**

Nancy C. Gutierrez, Director

Date