

Department of Fair Employment & Housing

Modifications to Proposed Amendments to the Department of Fair Employment and Housing Procedural Regulations

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 1. Procedures of the Department of Fair Employment and Housing

TEXT

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Chapter 1. Procedures of the Department of Fair Employment and Housing

§ 10000. Statement of Purpose.

These regulations interpret, implement, and supplement the procedures of the Department of Fair Employment and Housing (department) set forth in Article 1 of Chapter 7 (Gov. Code, § 12960 et seq.) (applicable to employment discrimination, Unruh Civil Rights Act (Civ. Code, § 51 et seq.), Ralph Civil Rights Act (Civ. Code, § 51.7), and Disabled Persons Act (Civ. Code, § 54 et seq.) complaints filed with the department) and Article 2 of Chapter 7 (Gov. Code, § 12980 et seq.) (applicable to housing discrimination complaints filed with the department) of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). These regulations and provisions of the FEHA shall govern the department's practice and procedure with respect to the filing, investigation and conciliation of complaints alleging practices made unlawful by any law the department enforces. The department will reasonably accommodate persons with disabilities in the filing, investigation, and conciliation of complaints.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f), 12948, 12960-12976 and 12980-12989.3, Government Code.

§ 10001. Definitions.

~~(a) "Authorized signature" means any of the following: (1) the signature of an attorney whom the complainant has identified in writing as his or her legal representative, licensed to practice law in the State of California; (2) the signature of any person other than an attorney whom the complainant has identified in writing as a person authorized to sign a complaint on his or her behalf; (3) the signature of a parent or legal guardian who signs a complaint on behalf of his or her minor child; (4) the signature of a direct relative (parent, child, sibling, etc.) with an interest in the estate of a deceased complainant or the executor of the estate of a deceased complainant.~~

(ab) "Civil Action" means the type of proceeding brought by the department pursuant to sections 12965 and 12981 of the Government Code.

(be) “Complainant” means a “person,” as that term is defined by Government Code section 12925(d) or 12927(g), who files a complaint with the department alleging that the person has been aggrieved by a practice made unlawful by any law the department enforces.

(cd) “Complaint” means a complaint filed with the department alleging that a “person,” as that term is defined by Government Code section 12925(d), or class or group of persons, has been aggrieved by a practice made unlawful by any law the department enforces. “Complaint” also means the charging document filed by the department pursuant to sections 12965 and 12981 of the Government Code.

(de) “Conciliation” means bringing two opposing sides together to reach a compromise in an effort to resolve a complaint filed with the department, which includes pre-determination settlement negotiations and post-investigation conciliation and/or settlement conferences conducted by the department’s enforcement division.

(ef) “Department” means the Department of Fair Employment and Housing (DFEH) and includes any officer, employee, or other individual delegated any function, power, or duty of the department.

(fg) “Departmental appeal” means a verbal or written appeal or request made to the department by a complainant or respondent seeking reconsideration of the department’s determination regarding a complaint filed with the department.

(gh) “Director” means the Director of the Department of Fair Employment and Housing and includes any officer, employee, or other individual delegated any function, power, or duty of the director.

(he) “Dispute Resolution Division” means the division of the department that employs trained neutrals to mediate complaints filed with the department when the parties to a complaint agree to mediate (“voluntary mediation”), or when the department requires parties to a complaint to mediate before the department files a civil action (“mandatory dispute resolution”). The dispute resolution division is separate from the department’s enforcement and legal divisions. It may utilize volunteers as well as dispute resolution division staff to facilitate communication between parties to assist them in attempting to reach a mutually acceptable settlement agreement.

(i) “District Administrator” means any employee, officer, or other individual delegated the authority to supervise the staff and day-to-day operations of a department district, satellite, or regional office.

(j) “EEOC” means the United States Equal Employment Opportunity Commission.

(k) “Enforcement Division” means the division of the department responsible for filing, investigating, and conciliating complaints alleging a practice made unlawful by any law the department enforces.

~~(l) “Filed or to file” means a complaint is considered “filed” with the department when it is date-stamped “received” by the department, except for complaints submitted online via the department’s automated right-to-sue notice system at www.dfeh.ca.gov which are considered filed on the date of submission.~~

~~(m) “HUD” means the United States Department of Housing and Urban Development.~~

~~(n) “Legal Division” means the division of the department responsible for issuing and prosecuting~~

civil complaints alleging a practice made unlawful by any law the department enforces.

~~(o) “Mediation Division” means the division of the department that employs trained neutrals to mediate complaints filed with the department when the parties to a complaint agree to mediate. The mediation division is separate from the department’s enforcement and legal divisions. It utilizes volunteers as well as mediation division staff to facilitate communication between parties to assist them in attempting to reach a mutually acceptable settlement agreement.~~

~~(np) “Pre-complaint inquiry” means the initial request to have the department investigate allegations that a “person,” as that term is defined by Government Code section 12925(d) of these regulations, or class or group of persons, may have been aggrieved by a practice made unlawful by any law the department enforces.~~

~~(oq) “Pre-determination” means the department has not yet determined whether a complaint has merit under the relevant standard.~~

~~(pr) “Protected basis” means any basis or characteristic upon which discrimination is prohibited by the FEHA, the Unruh Civil Rights Act (Civ. Code, § 51), the Ralph Civil Rights Act (Civ. Code, § 51.7), or any other law the department enforces.~~

~~(qs) “Regional Administrator” means any employee, officer, or other individual delegated the authority to supervise the staff and operations of a department regional office or multiple district or satellite offices.~~

~~(rt) “Respondent” means an entity or person alleged to have committed a practice made unlawful by a law the department enforces and against whom a complaint has been filed with the department or civil action has been filed.~~

~~(st) “Verified complaint” means a ~~signed~~ complaint submitted to the department with the complainant’s oath or affidavit stating that to the best of the complainant’s ~~his or her~~ knowledge, all information contained in the complaint is true and correct, except matters stated on information and belief, which the complainant ~~declares he or she~~ believes to be true. A complaint must be verified ~~through signature~~ prior to investigation by the department, ~~except for complaints submitted online via the department’s automated right to sue notice system at www.dfeh.ca.gov which are accepted as verified upon submission.~~~~

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 446, Code of Civil Procedure; Sections 12901-12903, 12925, 12927, 12930-12932, 12940, 12950, 12955-12956, 12960, 12961, 12963.1(a), 12963.7, 12964, 12965, 12971, 12980-12981, 12984-12989.3 and 12995, Government Code; ~~and Section 7285.5, Title 2, California Code of Regulations (Register 99, No. 12).~~

Subchapter 1. Employment, Unruh Civil Rights Act (CIV. Code, § 51 et seq.), Ralph Civil Rights Act (CIV. Code, § 51.7), and Disabled Persons Act (CIV. Code, § 54 et seq.) Complaints

§ 10002. Filing a Pre-Complaint Inquiry of Employment Discrimination with the Department.

(a) Any person claiming to be aggrieved by an employment practice made unlawful by the FEHA may file a pre-complaint inquiry with the department by telephone, in person, by mail, or on the department’s

Web site at www.dfeh.ca.gov, ~~in writing,~~ that shall describe the unlawful conduct alleged and include the following, on a form prescribed by the department:

- (1) complainant's name and, where available, address, telephone number and e-mail address;
- (2) respondent's name, address and, where available, telephone number and e-mail address. If applicable, the job title and/or capacity in which the respondent and/or co-respondent is being named also shall be included;
- (3) a description of the alleged act or acts of discrimination, harassment or retaliation;
- (4) the date of the most recent alleged act of discrimination, harassment or retaliation; and
- (5) each protected basis upon which the alleged discrimination or harassment was based.

(b) After submission of the pre-complaint inquiry, the department will initiate the investigative process ~~by preparing the inquiry for intake~~ as provided in Section 10007 of these regulations.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12960(b), Government Code.

§ 10003. Liberal Construction of Complaints.

[No changes are being proposed to this section.]

§ 10004. Categories of Employment Discrimination Complaints Accepted by the Department for Filing.

[No changes are being proposed to this section.]

§ 10005. Obtaining a Right-to-Sue Notice from the Department.

(a) Any person claiming to be aggrieved by an employment practice made unlawful by the FEHA may forgo having the department investigate ~~ahis or her~~ complaint and instead obtain an immediate right-to-sue notice. A right-to-sue notice issued by the department shall state that the aggrieved party may bring a civil action against the person or entity named in the complaint within one year from the date of the notice.

(b) Once the department issues a right-to-sue notice for a particular complaint, the department shall not investigate that complaint. Obtaining an immediate right-to-sue notice and waiving the department's investigation is advisable only if a complainant has been instructed by the complainant's ~~his or her~~ attorney to obtain a right-to-sue notice.

(c) An immediate right-to-sue notice may be obtained by submitting a right-to-sue complaint via the department's automated right-to-sue system accessible on the department's Web site at www.dfeh.ca.gov, U.S. mail, electronic mail, facsimile, or in person. ~~by filing a right to sue complaint. An immediate right to sue notice also may be obtained by filing a right to sue complaint via submission of a completed right to sue notice packet to a department district, satellite, or regional office via U.S. or electronic mail or facsimile. A right to sue packet may be obtained by telephone or written request (delivered via facsimile or U.S. or electronic mail) to a department district, satellite, or regional office,~~

~~or by downloading the packet from the department's Web site. With the exception of its automated right to sue system, all right to sue notices issued by the department shall be delivered by U.S. or electronic mail. A right to sue notice shall not be provided to any member of the public who appears in person at any department office without the prior consent of the district or regional administrator.~~

(d) To obtain an immediate right-to-sue notice via the department's automated right-to-sue system or by submitting a completed right-to-sue notice packet to the department, an aggrieved person shall file a right-to-sue complaint with the department containing the following:

- (1) complainant's name and, where available, address, telephone number and e-mail address;
- (2) respondent's name, address and, where available, telephone number and e-mail address. If applicable, the job title and/or capacity in which the respondent is being named also shall be included;
- (3) a description of the alleged act or acts of discrimination, harassment or retaliation;
- (4) the date or dates each alleged act of discrimination, harassment or retaliation occurred, including the date of the last or most recent alleged act;
- (5) each protected basis upon which the alleged discrimination or harassment was based;
- (6) for retaliation complaints, the date and type of protected activity in which the complainant engaged;
- (7) the complainant's declaration, made under penalty of perjury under the laws of the State of California, that to the best of the complainant's ~~his or her~~ knowledge all information stated is true and correct, except matters stated on information and belief, which the complainant ~~declares he or she~~ believes to be true;
- (8) the signature of the complainant, or an authorized signature, and the date signed, unless the complaint is filed electronically;
 - (A) "Authorized signatures" includes the following:
 - (i) the signature of an attorney whom the complainant has identified in writing as the complainant's legal representative, licensed to practice law in the State of California;
 - (ii) the signature of any person other than an attorney whom the complainant has identified in writing as a person authorized to sign a complaint on the complainant's behalf;
 - (iii) the signature of a parent or legal guardian who signs a complaint on behalf of a minor child; and
 - (iv) the signature of a direct relative (parent, child, sibling, etc.) with an interest in the estate of a deceased complainant or the executor of the estate of a deceased complainant.
- (9) complaints filed electronically need not be signed; complaints filed electronically shall state that by submitting the complaint, the complainant declares under penalty of perjury under the laws of the

State of California that to the best of ~~the complainant's~~ ~~his or her~~ knowledge, all information stated in the complaint is true and correct, except matters stated on information and belief, which the complainant ~~declares he or she~~ believes to be true;

(e) If a complaint for investigation has been filed with the department and the department does not file a civil action within one-hundred-fifty (150) days of the filing date of the complaint, the department shall issue a written notice advising complainant of ~~the~~ ~~his or her~~ right to request a right-to-sue notice and withdraw the complaint. When a right-to-sue notice has not earlier been requested, the department shall issue a right-to-sue notice at the completion of its investigation or one year after the complaint is filed, whichever occurs first.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12965(b), Government Code.

§ 10006. Filing a Complaint with the Department Alleging a Violation of the Unruh Civil Rights Act, Ralph Civil Rights Act, or Disabled Persons Act.

[No changes are being proposed to this section.]

§ 10007. Intake.

(a) To determine whether the department has jurisdiction over the conduct about which a person seeks to complain, or the respondent against whom the person seeks to file a complaint, the department shall screen pre-complaint inquiries requesting investigation by conducting an intake interview.

~~(b) A person may submit a pre-complaint inquiry for an employment discrimination complaint via the department's Web site at www.dfeh.ca.gov, by sending a request via e-mail to contact.center@dfeh.ca.gov, or by calling the department's toll free telephone number listed on its Web site. Individuals also may call the department's toll free number or send an e-mail to contact.center@dfeh.ca.gov to obtain basic technical assistance or referrals.~~

(eb) The department shall provide persons who file a pre-complaint inquiry with a confirmation of the receipt of their inquiry. The department will contact persons who have filed a pre-complaint inquiry to conduct or schedule an intake interview.

(cd) Persons for whom an intake appointment has been made should prepare to provide the department, where relevant, with the following information at the intake interview:

(1) the name and, where available, the address, telephone number, and e-mail address of the person seeking to file the complaint;

(2) the name, address and, where available, telephone number and e-mail address of the entity or person against whom the individual wishes to file a complaint. If applicable, the number of individuals employed by the entity or person against whom the individual wishes to file a complaint also shall be provided;

(3) the name of the employer, if applicable, as it appears on the most recent U.S. Internal Revenue Service form W-2 the person received, against whom the person wishes to file a complaint;

(4) the name and, where known, home address, telephone number, e-mail address, and job title of any person against whom the individual wishes to file a complaint of discrimination;

(5) each protected basis upon which the discriminatory conduct about which the person wishes to complain was based;

(6) the discriminatory conduct or treatment the person experienced and the date or dates such discriminatory conduct or treatment occurred;

(7) for retaliation complaints, the protected activity in which the person engaged and the date of the protected activity;

(8) the reason the person believes the conduct experienced was discriminatory and, if applicable, the name, address, telephone number, e-mail address and job title of any individual the employer treated more favorably;

(9) the name, address, telephone number, e-mail address and job title of each individual believed to have relevant information regarding the complaint of discrimination and a brief summary/description of the information;

(10) whether the person has filed a complaint with the EEOC;

(11) the following additional information may be relevant for employment discrimination complaints:

A. date of hire or application for job at issue;

B. job title and rate of pay at time the discriminatory treatment or conduct occurred;

C. name and title of immediate supervisor or interviewer;

D. if employment was terminated, name of replacement and the replacement's his/her protected basis, if any, where known;

E. if employment was terminated or prospective employer failed to hire, whether other employment was subsequently obtained and if so, the date of hire, job title, and rate of pay of replacement job;

F. If not hired for desired position:

a. how information about available position and rate of pay was obtained;

b. whether application for desired position was made orally or in writing;

c. name and/or job title of person to whom application was submitted or made and date of application;

d. date and manner in which decision not to hire was communicated; and

e. name and rate of pay, if known, of person hired for desired job.

~~(e) Intake interviews shall be conducted by telephone or other electronic means unless the department determines that special circumstances, such as the need for a sign language interpreter, require an in-person intake interview.~~

(fd) The department shall liberally construe the facts alleged by a potential complainant when evaluating whether to accept a complaint.

(eg) Notwithstanding the foregoing, the department shall only accept complaints for investigation where:

(1) The conduct alleged, if proven, would violate a law the department enforces.

(2) The statute of limitations has not run. For complaints alleging a continuing violation, the most recent act of harm alleged shall have occurred within the applicable limitations period. Where there is doubt about whether the statute of limitations has run, the complaint shall be taken by the department and the issue of timeliness investigated and analyzed during the investigation.

(3) Each named respondent is an entity or person over whom the department has jurisdiction under the laws the department enforces. Where there is doubt about whether the department has jurisdiction over a particular respondent, the complaint shall be taken by the department and the issue of jurisdiction investigated and analyzed during the investigation.

(fh) At the conclusion of the intake interview, complainants with claims over which another state agency may have jurisdiction shall be advised accordingly and provided referral information, regardless of whether the department also has jurisdiction over some or all of a complainant's claims.

(gi) The department shall not accept complaints where the same protected bases, discriminatory acts, and allegations are or have been included in a complaint the complainant previously filed with the department or the EEOC against the same respondent(s).

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12930(f)(1)-(2), 12948, 12960(b) and 12960(d), Government Code.

§ 10008. Priority Intake.

(a) A person who seeks to file a complaint for investigation whose statute of limitations would run in thirty (30) days or less, or who seeks to file a complaint for investigation alleging a violation of the ~~Unruh Civil Rights Act or Ralph Civil Rights Act~~, or a person who is terminally ill, may be given priority for the purpose of scheduling an intake interview~~appointment~~.

(b) The department may file a complaint for investigation ~~solely on the basis of a telephone interview with a complainant~~, without first obtaining the complainant's signature verification of~~a~~ the complaint, when doing so is necessary to avoid missing the statute of limitations for filing with the department. Notwithstanding the foregoing, the department shall obtain a verificationsignature of~~a~~ a complaint for investigation before the complaint is served.

(c) A person who seeks to file a complaint for investigation with the department that alleges retaliation occurring within one-hundred-eighty (180) days of the person's filing a prior complaint of discrimination with the department, or within one-hundred-eighty (180) days of that person's participation in an investigation conducted by the department, may be given priority.

(d) Any other person whose situation warrants a priority intake in the department's discretion may be given priority for the purpose of scheduling an intake appointment.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12930(f)(1)-(2), 12940(h), 12948, 12960(b) and 12960(d), Government Code.

§ 10009. Drafting Complaints Filed for Investigation.

(a) The department shall draft the language of each complaint filed for investigation on a complaint form prescribed by the department. The complaint shall contain all the information identified in section 12960(b) of the Government Code, and section 10007 of these regulations, and set forth the allegations in ordinary and concise language of the department's choosing, identifying in the body of the complaint material dates, the name and job title of each individual responsible for the alleged unlawful employment practices, and the manner in which they are responsible. Such individuals shall be identified in the body of the complaint regardless of whether they are named as respondents or personally liable for their conduct under the laws the department enforces. The department shall liberally construe the facts alleged by a complainant when drafting a complaint and include all relevant claims supported by the facts alleged.

(b) The department may omit a complainant's address, telephone number, and e-mail address on any complaint alleging that the complainant has been subjected to violence or threats of violence including, but not limited to, sexual assault.

(c) Once drafted, a complaint may be ~~signed~~verified by a complainant in person or sent to the complainant for ~~verification~~signature via U.S. mail, private carrier mail, facsimile transmission, e-mail, or other electronic means. When requested in writing by an attorney or advocacy organization representing the complainant, the drafted complaint shall be sent to the attorney or advocacy organization for review and to obtain the complainant's ~~verification~~signature.

(d) The filing date of a complaint shall be the date a DFEH office receives a ~~verified~~signed complaint, regardless of whether the complaint is ~~verified~~signed by the complainant in the office or the complaint is ~~verified~~signed elsewhere and transmitted to the office via United States (U.S.) mail, ~~electronically~~mail, private carrier mail (e.g., FedEx), facsimile, or hand delivery. ~~Where a limited exception exists where a complainant cannot verify sign a complaint for investigation before the applicable statute of limitations runs, in this limited circumstance, the department shall file the unverified complaint and accept file the unsigned complaint and date stamp it as received before the statute of limitations runs. Notwithstanding the foregoing, the department shall obtain a verified signature on the unsigned complaint before it is served.~~

(e) No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice occurred, except that this period may be extended as set forth in section 12960(d) of the Government Code and section 10018 of these regulations.

(f) Any complainant, ~~or complainant's attorney who~~ or advocacy organization ~~which wishes to~~ may propose modifications to the ~~unverified~~ signed complaint ~~shall do so in writing submitted to the department via U.S. mail, private mail carrier, facsimile transmission, e-mail, or other electronic means.~~ The department shall consider the proposed modifications and, if accepted, draft a new complaint which may be ~~verified~~ signed by a complainant in person or sent to the complainant for ~~verification~~ signature. When requested ~~in writing~~ by an attorney or advocacy organization representing the complainant, the modified complaint shall be sent to the attorney or advocacy organization for review and to obtain the complainant's ~~verification~~ signature. When modifications are not accepted, the department shall notify the complainant and ~~the complainant's~~ ~~his or her~~ attorney or advocacy organization, if any, of the reasons for rejection and send to the complainant via U.S. mail, facsimile transmission, e-mail, or other electronic means another copy of the original complaint for ~~verification~~ signature.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12930(f)(1)-(2), 12948, 12960(b) and 12960(d), Government Code.

§ 10010. Written Statement or Correspondence as Complaint.

(a) If the statute of limitations would expire before an intake interview could be scheduled and completed for a complaint filed for investigation, the department may promptly initiate and conduct an intake interview by phone, without an appointment, or waive the intake process and accept a complaint for investigation using a written statement or correspondence from the complainant ~~verified~~ signed under penalty of perjury. As long as the written statement or correspondence satisfies all the requirements set forth in section 12960 of the Government Code, and section 10002 of these regulations, alleges a claim or claims over which the department has jurisdiction, and the statutory deadline to file with the department is imminent, the department may accept such a written statement or correspondence as a complaint for investigation.

~~(b) A statement shall be handwritten or typed and may be submitted electronically or by facsimile transmission to the department.~~

~~(e)~~ The department may accept a statement from a complainant's attorney as long as the complainant has ~~verified~~ signed the statement of complaint or submits a signed statement authorizing the attorney to ~~sign~~ verify the complaint on ~~the complainant's~~ ~~his or her~~ behalf.

~~(d)~~ When intake has been waived, an investigator shall interview the complainant as soon as practicable after the complaint is filed and file an amended complaint on the form prescribed by the department. If, during the interview, the complainant presents new facts or raises new issues not included in the original complaint, they may be included in the amended complaint as long as the new facts and/or issues are based on or relate back to the facts stated in the original complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12930(f)(1)-(2), 12948, 12960(b) and 12960(d), Government Code.

§ 10011. Complaints Taken for Filing Purposes Only.

(a) Where the department rejects at intake all or some of the allegations presented by a person who seeks to file an employment discrimination complaint for investigation by the department, the department shall

explain the reasons for rejection and offer the person the option of filing a complaint taken for filing purposes only. The department may only reject an allegation if it is clear that the statute of limitations has run and/or that the allegation, if proven, would not constitute a violation of the FEHA.

(b) A complaint accepted by the department for filing purposes only shall state the rejected allegations, which shall not be investigated by the department. The department may still dual-file the complaint with the EEOC. In the event that the complaint is not dual-filed, the department shall give the complainant contact information for ~~the~~his or her local EEOC office. Where a person rejects the department's offer to take a complaint for filing purposes only, ~~that person~~he or she may request that the department provide the reasons for rejection in writing, which the department shall thereafter provide.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12960(b), Government Code.

§ 10012. Director's Complaints.

[No changes are being proposed to this section.]

§ 10013. Class or Group Complaints.

[No changes are being proposed to this section.]

§ 10014. Retaliation Complaints - Special Considerations.

[No changes are being proposed to this section.]

§ 10015. Medical Information - Special Considerations.

(a) Whenever a complaint includes allegations that require the department to obtain and analyze medical information, such as complaints alleging physical or mental disability discrimination, denial of reasonable accommodation, pregnancy discrimination, and/or a violation of the California Family Rights Act (Gov. Code, § 12945.1 et seq.), the complainant shall authorize the department in writing to request and obtain copies of all directly relevant medical records or information reasonably necessary to evaluate and prosecute the complaint.

(b) During the enforcement division's investigation, all medical records the department obtains during the investigation shall be maintained in a section of the case file clearly marked "Medical Records" or otherwise designated as "Confidential."

(c) If a civil action is filed, all directly relevant medical records or information reasonably necessary to prosecute the civil complaint, if any, may be disclosed by the department when disclosure is necessary to further prosecution and/or settlement of the claim.

(d) No medical records or information shall be disclosed by the department in response to a request for public records made pursuant to the California Public Records Act. (Gov. Code, § 6254(c).)

(e) No medical records or information shall be disclosed by the department in response to a third-party subpoena unless a Notice to Consumer/Employee has been served on the complainant and there has been no objection communicated to the department by the complainant or the complainant's attorney. (Code. Civ. Proc., §§1985.3, 1985.6, and 2020.410.)

(f) The department shall abide by complainant's attorney's requests to protect the privacy of complainant's medical information. However, if the department is unable to obtain the medical information and records it deems reasonably necessary to investigate and/or prosecute a complainant's allegations, the department may discontinue the investigation and close the complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516 [174 Cal.Rptr. 160] [discovery of private information requires direct relevance to claim]; Sections 1985.3, 1985.6 and 2020.410, Code of Civil Procedure; and Sections 6253, 6254(c), 12930(f)(1), 12940(a), 12940(m), 12945, 12945.1, 12945.2 and 12960(b), Government Code.

§ 10016. Standard for Accepting Complaint When Act of Harm Occurred Outside California.
[No changes are being proposed to this section.]

§ 10017. Effect of Prior Waiver Agreement/Release of All Claims.

(a) Where all other jurisdictional requirements have been met for filing a complaint for investigation with the department, the department shall accept a complaint where a complainant presents at intake a signed waiver agreement or release of all claims. The investigation shall initially focus on obtaining information necessary to determine whether the complainant has validly waived the complainant's~~his or her~~ right to file a complaint with the department. Such information shall include, but not be limited to:

- (1) a description of all benefits received in exchange for signing the waiver;
- (2) the amount of time the complainant was given to consider the waiver before signing;
- (3) whether the complainant was given the opportunity to seek legal counsel before signing;
- (4) whether the complainant sought legal advice before signing;
- (5) the conditions under which the waiver was signed (e.g. whether the waiver was signed in a non-coercive atmosphere); and
- (6) whether the waiver was presented in a language understood by the complainant and/or whether interpretative services were provided.

(b) Where a respondent produces a signed waiver agreement or release of all claims during an investigation, the department shall promptly obtain information necessary to determine whether the complainant has validly waived the complainant's~~his or her~~ right to file a complaint with the department. Such information shall include, but not be limited to, the information identified in section 10017(a) of these regulations.

(c) The department shall close any case where it has been determined that a complainant has validly waived the complainant's~~his or her~~ right to file a complaint with the department unless the department determines that:

- (1) the complaint alleges an unlawful systemic policy or practice that adversely affects a large number of employees; and/or

(2) an anticipated affirmative remedy would impact a large number of employees or an entire industry in a manner consistent with the department's mission; and/or

(3) the complaint allegations address an important legal issue in an area where the department seeks to establish case law.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12920, 12930(f)(1) and 12960(b), Government Code.

§ 10018. Complaints Taken After Expiration of Statute of Limitations Due to Department Error.
[No changes are being proposed to this section.]

§ 10019. Complaints Dual-Filed with the EEOC.
[No changes are being proposed to this section.]

§ 10020. Complaints Transferred to the EEOC for Processing.
[No changes are being proposed to this section.]

§ 10021. Service of Complaints.

(a) Only verified complaints filed for investigation with the department by complainants not represented by counsel shall be served by the department. The department may, but is not required, to also serve:

(1) verified complaints filed for investigation with the department by complainants represented by counsel;

(2) complaints accepted only for filing purposes from complainants not represented by counsel; or

(3) complaints accepted only for filing purposes from complainants represented by counsel.

(b) The department shall strive to initiate service upon all respondents named in a verified complaint filed for investigation by a complainant not represented by counsel, or any other complaint the department decides to service, within ten (10) working days after the complaint is filed. Whenever service is required or initiated pursuant to the department's discretion, service shall be initiated not more than sixty (60) days after the complaint is filed.

(c) The date of service is the date the complaint is placed in the mail (certified mail only) or personally delivered to the respondent.

(d) All department service documents shall be ~~placed in an envelope~~ clearly marked "PERSONAL AND CONFIDENTIAL: TO BE OPENED BY ADDRESSEE OR DESIGNATE ONLY." ~~regardless of whether the documents are served by personal service or certified mail with return receipt requested.~~

(e) If a complaint sent via certified mail to a respondent's correct last known address is returned as undeliverable, or if the respondent refused service, the department shall promptly take steps to re-serve the complaint including, but not limited to, initiating personal service of a verified complaint filed for investigation.

(f) The department may forego serving by certified mail and promptly initiate personal service whenever the circumstances warrant.

(g) The department shall not serve complaints issued in response to requests for an immediate right-to-sue notice, regardless of whether or not a complainant is represented by counsel.

(h) The department shall allow a complainant to rescind a verified complaint prior to service and if a complaint is rescinded, the department will not serve the complaint. A complainant must submit a signed written verification that they are requesting to rescind a complaint prior to service and acknowledge they understand the complaint will not be investigated. Should they wish to proceed with it, they would have to submit a new pre-complaint inquiry.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12962, Government Code; and *Wasti v. Superior Court* (2006) 140 Cal.App.4th 667 [44 Cal.Rptr.3d 625].

§ 10022. Amending Complaints.

(a) The department may amend an open complaint of discrimination to:

(1) add bases or allegations for which the statute of limitations has not run;

(2) add or delete facts or change the wording of a complaint;

(3) cure technical defects or omissions, including correcting a case number, address, or name of a party; ~~the name of a respondent;~~

(4) add new bases, respondents, or complainants after the expiration of the one-year statute of limitations where the amendment either relates back to the same material facts set forth in the original complaint, or the original complaint contains language that specifically references or identifies the bases, respondents, or complainants to be added;

(5) add an allegation of retaliation after the one-year statute of limitations has run where the alleged retaliatory conduct is the same conduct complained of in the original complaint (e.g., termination) for which another discriminatory basis was originally alleged (e.g., national origin discrimination); and/or

(6) add class or group allegations to an individual complaint and pursue the complaint as a class or group complaint.

(b) When an open complaint of discrimination has been amended:

(1) respondents shall be given sufficient notice and time to respond to new allegations;

(2) the filing date of the amended complaint remains the same as the original filing date.

(c) The department shall not amend an open complaint to add:

(1) allegations that are beyond the one-year statute of limitations if the allegations relate to a

different set of facts than those alleged in the original complaint;

(2) bases or allegations that would have been rejected if raised at intake;

(3) bases or allegations refuted by evidence obtained during the investigation.

(4) Under the foregoing circumstances, the department shall offer the complainant a complaint for filing purposes only, which shall not be investigated, and which, if accepted by the complainant, shall contain the new bases and/or allegation(s).

(d) The department shall amend closed employment discrimination complaints as requested by complainants or their counsel.

(e) When the department amends a closed complaint, the department shall neither reopen the complaint nor make an administrative determination on the validity, retroactivity, or merits of the amendment.

(f) When a closed complaint is amended by the department, the original filing date and right-to-sue notice shall remain in effect, as shall the original statute of limitations for filing a private lawsuit.

~~(g) The department shall handle nonsubstantive changes to an original complaint, such as correcting an incorrect case number, incorrect address, misspelled word, or other clerical errors, by correcting the original complaint, not by amending it.~~

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12960(b), Government Code.

§ 10023. Response to Complaint.

[No changes are being proposed to this section.]

§ 10024. Conciliation.

[No changes are being proposed to this section.]

§ 10025. ~~DFEH Mediation~~ Dispute Resolution Division Services.

(a) The department may offer the parties to a complaint filed for investigation the opportunity to mediate the complaint before investigation commences (“pre-investigation mediation”). One or both parties to a complaint filed for investigation also may request pre-investigation mediation. Pre-investigation mediation conferences are not attended by any representative of the department’s enforcement or legal divisions.

(b) Pre-investigation mediation is voluntary. Therefore, the department shall not assign a pre-investigation complaint to a mediator to mediate unless both the complainant and respondent (or their respective attorneys or advocacy organizations, if any) have agreed to mediate.

~~(b)~~ While a pre-investigation complaint is with the ~~mediation~~ dispute resolution division, the requirement to submit a response to the complaint is temporarily suspended. However, if mediation is declined or is unsuccessful, a response shall be provided to the department no later than twenty-one (21) days after the date the department notifies the respondent that a response is due because mediation was

declined or was unsuccessful. After the complaint is returned for investigation, the enforcement division shall in writing notify the respondent or, if the respondent is represented, the respondent's attorney, of the exact date the response is due.

~~(ed) After an investigation finds merit under the relevant legal standard and prior to filing a civil action, the department shall require the parties to participate in mandatory dispute resolution in an effort to resolve the dispute without litigation. Offering a reasonable opportunity to mediate satisfies the department's obligation under sections 12963.7 and 12965 of the Government Code to eliminate the unlawful practices through conciliation or mediation even if one or both of the parties refuse to participate. The department also may offer the parties to a complaint filed for investigation the opportunity to mediate the complaint after investigation ("post investigation mediation"). Post investigation mediation conferences conducted before a civil action is filed ("pre action") shall be attended by a representative of the department's enforcement division. The enforcement division representative may be the investigating office's assigned staff counsel. If a post investigation mediated settlement is reached pre action, the enforcement division representative who participated in the mediation shall not sign the settlement agreement. If a settlement is not reached, and the enforcement division's mediation representative was the investigating office's assigned staff counsel, the legal division shall not assign the same staff counsel to file and prosecute the civil action in the matter.~~

~~(de) Post-investigation mediation conferences conducted after a civil action is filed ("post-civil action") shall be attended by the member of the department's legal division who filed the civil action or who has subsequently been assigned the case. If settlement is reached, the legal division representative shall sign the settlement agreement. If settlement is not reached, the same staff counsel who filed the civil action and mediated the matter may prosecute the case.~~

~~(e) If, after investigation, the department determines that the complaint is valid and offers the parties mediation, such offer satisfies the department's obligation under Government Code section 12963.7 to "immediately endeavor to eliminate the unlawful ... practice complained of by conference, conciliation, and persuasion," regardless of whether the mediation occurs before or after the department files a civil action.~~

(f) Regardless of whether the department refers a complaint to the dispute resolution~~mediation~~ division before or after investigation has commenced, the department shall suspend investigation while the complaint is with the dispute resolution~~mediation~~ division. After mediation is declined or is unsuccessful, the department shall commence, resume, or complete the investigation as necessary.

~~(g) Mediation is voluntary. Therefore, the department shall not assign a complaint to a mediator unless both the complainant and respondent (or their respective attorneys or advocacy organizations, if any) agree to mediate.~~

~~(hg) When both sides agree to mediate a complaint pre-investigation~~action, the department may assign the complaint to a ~~trained volunteer mediator or a trained mediator employed by the department's~~ dispute resolution~~mediation~~ division or a trained volunteer mediator, based on mediator availability and the department's discretion. Whenever a complainant or respondent is represented by an attorney or advocacy organization, the assigned mediator shall communicate with the party's attorney or advocate regarding scheduling and settlement. Matters the legal division refers for mandatory dispute resolution shall be assigned to a DFEH attorney mediator.

(ih) Except as otherwise required by law, nothing that is said or done in the course of the mediation process may be made public. However, settlement agreements shall be made public unless the parties request nondisclosure and the director, or a designated representative, determines that disclosure is not required to further the purposes of the laws enforced by the department. Circumstances that may result in partial or complete nondisclosure of a conciliation agreement may include, but are not limited to:

(1) Claims involving allegations of sexual harassment;

(2) A complainant's physical or mental condition, or medical diagnoses; or

(3) Claims involving circumstances that, if disclosed, could create a safety risk, including the fact that a complainant is a resident in a domestic violence shelter or other protected residence.

~~The mediation process is confidential, including, for pre-action mediations, any settlement agreement entered into by a complainant and respondent, and the terms thereof. However, the following are not confidential:~~

- ~~-~~
- ~~(1) issues established as fact during the investigation;~~
- ~~-~~
- ~~(2) post-action settlement agreements and the final terms of settlement; and/or~~
- ~~-~~
- ~~(3) new facts presented by the respondent at a post investigation mediation conference that cause the department to re-evaluate the case and determine not to file a civil action. A respondent providing such information at a mediation conference shall authorize the department to use the information to close the case.~~

(ji) Any written settlement agreement reached through a DFEH ~~dispute resolution~~mediation division conference may be used as evidence to enforce the terms of the settlement agreement if the conditions of Evidence Code section 1123 are satisfied and the agreement contains language showing the intent of the parties to be bound by the agreement's terms.

(j) All DFEH-mediated settlement agreements shall include "affirmative relief" as defined in Government Code section 12926(a), including ~~Affirmative relief may include training, the development of policies or practices to prevent future workplace discrimination or harassment, reporting requirements, and monitoring compliance with settlement terms.~~ DFEH mediators assist parties to select the affirmative relief that is best suited to the ~~employment~~ complaint at issue.

(k) A copy of any settlement agreement executed in connection with a DFEH ~~dispute resolution~~mediation division conference shall be provided to the department's ~~dispute resolution~~mediation division.

(l) DFEH complaints resolved through mediation shall be closed by the department.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 1119, 1120 and 1123, Evidence Code; and Sections 12930(f) and 12963.7, Government Code.

§ 10026. Complaint Investigation.

(a) After any employment discrimination complaint alleging facts sufficient to constitute a violation of

the FEHA is filed for investigation with the department, the department shall initiate prompt investigation thereof.

(b) Where it is disputed or unclear that the department has jurisdiction over a particular respondent or allegation, the investigation shall initially focus on obtaining the information and documents necessary to determine whether the department has jurisdiction.

(c) During the course of its investigation the department may, but is not required, to issue and serve investigative subpoenas, written interrogatories, and requests for production of books, records and documents. If a person or entity fails to comply with a subpoena, written interrogatories, or requests for production of documents properly issued and served by the department, after requesting compliance in writing and/or by telephone, the department shall file a petition with the superior court, in accordance with section 12965.3 of the Government Code, to compel compliance with its investigative discovery.

(d) The department shall gather during the course of an investigation all relevant evidence necessary to determine whether an unlawful practice has occurred.

(e) Where relevant to a ~~For all~~ workplace discrimination complaints, the department ~~may~~shall obtain the complainant's complete personnel file or files from the respondent.

(f) The department shall prioritize early in the investigative process complex cases and cases that appear to have merit under the relevant legal standard to better allocate the department's resources.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)-(g), 12963 and 12963.1-12963.5, Government Code.

§ 10027. Investigative Subpoenas.

[No changes are being proposed to this section.]

§ 10028. Investigative Requests for Production and Inspection.

[No changes are being proposed to this section.]

§ 10029. Priority Case Processing/Case Grading System.

[No changes are being proposed to this section.]

§ 10030. Investigations Not Completed Within Statutory Time Limit.

(a) Where an investigation is not completed within the statutory time limit the department may:

(1) continue the investigation;

(2) taking into consideration the complexity of the case, time necessary to complete the investigation, and likelihood of proving discrimination, close the case where continued investigation would be an inefficient use of the department's resources; or

(3) if the case is dual-filed with the EEOC, waive the case to the EEOC for continued investigation.

(b) When an investigation is completed after the statutory time limit and the complaint has been found

meritorious under the relevant legal standard, the department shall schedule a conciliation or mediation conference.

(c) The department shall not file a civil action when an investigation is completed after the statutory time limit and a complaint has been found meritorious under the relevant legal standard. However, the director, in his or her discretion, may issue a director's complaint if otherwise appropriate under section 12960 of the Government Code and section 10012 of these regulations.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12930(h), 12963 and 12965(a), Government Code.

§ 10031. Civil Actions.

(a) If, after investigation, it is determined by the department that a complaint has merit under the relevant legal standard, the director, in his or her discretion, may file a civil action in the name of the department. The discretion to file a civil action may be delegated to the department's chief counsel or ~~his or her~~ designated associate or assistant chief counsel.

(b) A civil action may be filed, if at all, only after the department has offered mandatory dispute resolution in accordance with section 10025 of these regulations. ~~an unsuccessful post investigation conciliation or mediation conference or, if circumstances warrant, the department may file a civil action without holding a conciliation or mediation conference.~~

(c) The department has discretion not to file a civil action when circumstances warrant. Factors considered by the department when determining whether to proceed with a civil action include, but are not limited to: (1) the strength and sufficiency of the evidence of unlawful conduct; (2) the likelihood of prevailing on the merits at hearing or trial; (3) the availability and allocation of department resources; (4) whether the alleged violation addresses an important legal issue in an area where the department seeks to establish case law; (5) whether filing the civil action and subsequent litigation thereof are likely to impact civil rights in a manner consistent with the department's mission; and/or (6) whether the respondent has offered the complainant an equitable remedy the complainant has refused.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(h) and 12965(a), Government Code.

§ 10032. Notice of Case Closure.

[No changes are being proposed to this section.]

§ 10033. Departmental Appeal.

(a) Any person who wishes to appeal the department's decision to reject a complaint or close a case may appeal to the director, or to the director's designee, within 10 days following notification of the department's decision. The appeal shall set forth specifically and in full detail the grounds upon which the appealing party considers the department's determination to be unjust or unlawful, and every issue to be considered by the director or the director's designee. The director or the director's designee may consider any issue relating to the initial decision and may modify, affirm, or reverse the decision, including by reopening the investigation. The director's designee in responding to appeals shall be a person who does not directly supervise the department employee who made the initial decision to reject

~~a complaint or close a case. The decision of the director or the director's designee is final and may not be appealed to any other department employee, officer, or other individual delegated any function, power, or duty of the department. Any person who wishes to appeal the department's decision to reject a complaint or close a case shall direct his or her concerns to the district administrator or, if there is no district administrator, the regional administrator of the office that rejected or closed the complaint. Appeals may be presented verbally by telephone or in writing.~~

(b) When an appeal is completed after the statutory time limit and the complaint has been found meritorious under the relevant legal standard, the department shall schedule a conciliation or mediation conference.

~~(b) Regardless of whether an appeal is oral or written, the district administrator or, if there is no district administrator, the regional administrator, or other individual delegated any function, power, or duty of the district or regional administrator, shall respond in writing. Where the appeal concerns a complaint rejected for investigation, the district or regional administrator, or his or her designee, also shall draft a complaint for filing purposes only, to be included with the written response.~~

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~~(c) Any person dissatisfied with the response of the district administrator may direct his or her further appeal to the regional administrator or his or her designee.~~

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~~(d) Regardless of whether the further appeal is oral or written, the regional administrator, or other individual delegated any function, power, or duty of the regional administrator, shall respond in writing.~~

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~~(e) Any person dissatisfied with the response of the regional administrator may direct his or her further appeal to the chief of enforcement.~~

-

~~(f) Regardless of whether the further appeal is oral or written, the chief of enforcement, or his or her designee, shall respond in writing.~~

-

~~(g) Any person dissatisfied with the response of the chief of enforcement may direct his or her further appeal to the director.~~

-

~~(h) Regardless of whether the further appeal is oral or written, the director, or his or her designee, shall respond in writing.~~

-

~~(i) The decision of the director is final and may not be appealed to any other department employee, officer, or other individual delegated any function, power, or duty of the department.~~

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~~(c)j) Any concerns regarding the handling of an open complaint shall be directed to the district administrator or, if there is no district administrator, the regional administrator of the office where the complaint is being investigated.~~

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~~(k) Any person dissatisfied with the response of the district administrator may direct his or her concerns to the regional administrator or his or her designee.~~

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~~(l) Any person dissatisfied with the response of the regional administrator, or his or her designee, may direct his or her concerns to the chief of enforcement.~~

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~~(m) The response of the chief of enforcement, or other individual delegated any function, power, or duty of the chief of enforcement, is final and may not be appealed to any other department employee or officer while the complaint is open. After the complaint is closed, any remaining concerns may be directed to the director, whose response, and/or the response of his or her designee, shall be final and nonappealable to any other department employee, officer, or other individual delegated any function, power, or duty of the department.~~

~~(n) Any respondent who wishes to complain about the filing of a civil action against the respondent shall direct his or her concerns to the chief counsel of the department's legal division.~~

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12960(b), 12965 and 12971, Government Code.

§ 10034. EEOC Substantial Weight Review.

[No changes are being proposed to this section.]

Subchapter 2. Housing Discrimination Complaints

§ 10035. Filing a Pre-Complaint Inquiry of Housing Discrimination with the Department.

(a) Any person claiming to be aggrieved by a housing practice made unlawful by the FEHA, or any other law the department enforces, may file a pre-complaint inquiry with the department by telephone, in person, by mail, or on the department's Web site at www.dfeh.ca.gov, in writing, that shall describe the unlawful conduct alleged and include the following, on a form prescribed by the department:

- (1) complainant's name and, where available, address, telephone number and e-mail address;
- (2) respondent's name and, where available, address, telephone number and e-mail address;
- (3) a description of the alleged act or acts of housing discrimination, harassment or retaliation;
- (4) the date or dates each alleged act of housing discrimination, harassment or retaliation occurred, including the date of the last or most recent act alleged;
- (5) a description of the housing accommodation at issue;
- (6) the address of the housing accommodation at issue; and
- (7) each protected basis upon which the alleged housing discrimination or harassment was based.

(b) After submission of the pre-complaint inquiry, the department will initiate the investigative process ~~and prepare the inquiry for intake~~ as provided in section 10038 of these regulations.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12930(f)(1)-(2), 12955(d) and 12980(a)-(b), Government Code.

§ 10036. Liberal Construction of Complaint.

[No changes are being proposed to this section.]

§ 10037. Filing a Housing Discrimination Complaint with the Department Alleging a Violation of the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), Ralph Civil Rights Act (Civ. Code, § 51.7), or Disabled Persons Act (Civ. Code, § 54 et seq.).

[No changes are being proposed to this section.]

§ 10038. Intake.

(a) To determine whether the department has jurisdiction over the conduct about which a person seeks to complain, or the respondent against whom a person seeks to file, the department shall screen pre-complaint inquiries filed for investigation by conducting an intake interview.

~~(b) A person may submit a pre-complaint inquiry for a housing discrimination claim via the department's Web site at www.dfeh.ca.gov, by sending a request via e-mail to contact.center@dfeh.ca.gov, or by calling the department's toll free telephone number for the housing unit listed on the department's Web site. Individuals also may call the department's toll free number or send an e-mail to contact.center@dfeh.ca.gov to obtain basic technical assistance or referrals.~~

~~(e)~~ (b) The department will provide persons who file a pre-complaint inquiry with confirmation of the receipt of their inquiry. The department will contact persons who have filed a pre-complaint inquiry to conduct or schedule an intake interview.

~~(d)~~ (c) Persons for whom an intake appointment has been made should prepare to provide the department, where relevant, with the following information at the intake interview:

- (1) the name and, where available, address, telephone number, and e-mail address of the person who seeks to file the complaint;
- (2) the name and, where available, address, telephone number, and e-mail address of any other adults who sought housing with the person or who reside or would have resided with the person in the housing accommodation at issue;
- (3) the names and ages of any children who sought housing with the person or who reside or would have resided with the person in the housing accommodation at issue;
- (4) the name and, where available, address, telephone number, and e-mail address of the person or entity against whom the person seeks to file a complaint (“respondent”);
- (5) whether the respondent is an owner, manager, developer, management company, real estate broker, lending institution or other entity;
- (6) the address and, if applicable, name of the property where the housing accommodation was sought;
- (7) whether the desired housing accommodation was a single family home or an apartment; if an apartment, the number of units at the location;
- (8) each protected basis upon which the discriminatory conduct about which the person wishes to

complain was based;

(9) the discriminatory conduct or treatment the person experienced and the date or dates such discriminatory conduct or treatment occurred;

(10) for retaliation complaints, the protected activity in which the person engaged and the date of the protected activity;

(11) the reason the person believes the conduct experienced was discriminatory and, if applicable, the name, address, telephone number, and e-mail address of any tenant, applicant, or homebuyer the person believes was treated more favorably;

(12) the name, address, telephone number, and e-mail address of each person believed to have relevant information regarding the complaint of housing discrimination;

(13) whether the person has filed the same complaint with HUD;

(14) the name, address, telephone number and e-mail address of any other agency, organization, or group with which the person has filed the same complaint of discrimination;

(15) whether a civil complaint alleging the same unlawful housing practice(s) has been filed and, if so, a copy of the complaint;

(16) the following additional information may be relevant in~~for~~ complaints alleging refusal or denial to show, rent, lease, sell or finance a housing accommodation:

A. how information about the vacancy or sale was obtained;

B. the terms of the sale, rental, or financing sought;

C. whether an application was submitted and, if so, the submission date;

D. if an application was not submitted, the reason no application was submitted;

E. the date of the denial or refusal;

F. the reason given for the denial or refusal;

G. the name address, telephone number, e-mail address and title of the person who made the denial or refusal;

H. whether a lease or contract was signed and, if so, a copy of the lease or contract;

I. the name, telephone number, and e-mail address of the person or persons who obtained the housing accommodation sought, if known;

(17) the following additional information may be relevant in~~for~~ complaints alleging a discriminatory eviction:

- A. date of initial notice;
- B. date required to vacate;
- C. whether the person has been served a Notice of Unlawful Detainer and, if so, the date of the notice and the court date;
- D. the reason or reasons given for the eviction; and
- E. the name, address, telephone number, and e-mail address of others who have been evicted.

~~(e) Intake interviews shall be conducted by telephone or other electronic means unless the department determines that special circumstances, such as the need for a sign language interpreter, require an in-person intake interview.~~

~~(f)~~ The department shall liberally construe the facts alleged by a potential complainant when evaluating whether to accept a complaint.

~~(g)~~ Notwithstanding the foregoing, the department shall only accept a complaint where:

- (1) The conduct alleged, if proven, would violate a law the department enforces.
- (2) The statute of limitations has not run. For complaints alleging a continuing violation, the most recent act of harm alleged shall have occurred within the applicable limitations period. Where there is doubt about whether the statute of limitations has run, the complaint shall be taken by the department and the issue of timeliness investigated and analyzed during the investigation.
- (3) Each named respondent is an entity or person over whom the department has jurisdiction under the laws the department enforces. Where there is doubt about whether the department has jurisdiction over a particular respondent, the complaint shall be taken by the department and the issue of jurisdiction investigated and analyzed during the investigation.

~~(h)~~ At the conclusion of the intake interview, complainants with claims over which another state agency may have jurisdiction shall be advised accordingly and provided referral information, regardless of whether the department also has jurisdiction over some or all of a complainant's claims.

~~(i)~~ The department shall not accept complaints where the same protected bases, discriminatory acts, and allegations are or have been included in a complaint the complainant previously filed with the department or HUD against the same respondent(s).

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12930(f)-(2), 12955(d) and 12980(a), Government Code.

§ 10039. Priority Intake.

(a) The following may be given priority for the purpose of scheduling an intake appointment for a housing discrimination complaint:

- (1) a person whose statute of limitations would run in thirty (30) days or less;
- (2) a person alleging a failure to rent where the desired unit is still available;
- (3) a person facing an impending and allegedly discriminatory eviction where action by the department may delay the eviction;
- (4) a person who is terminally ill;
- (5) a homeless person or a person at risk of institutionalization;
- (6) a person complaining about conduct that, if proven, would constitute a violation of the Ralph Civil Rights Act; and/or
- (7) any other person whose situation warrants a priority intake in the department's discretion.

(b) A person who seeks to file a complaint for investigation with the department that alleges retaliation occurring within one-hundred-eighty (180) days of the person's filing a prior complaint of discrimination with the department, or within one-hundred-eighty (180) days of that person's participation in an investigation conducted by the department, may be given priority.

(c) The department may file a complaint ~~for investigation solely on the basis of a telephone interview with a complainant,~~ without first obtaining the complainant's ~~signature verification of~~ the complaint, when doing so is necessary to avoid missing the statute of limitations for filing with the department. Notwithstanding the foregoing, the department shall obtain ~~verification a signature on~~ the complaint before it is served.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12930(f)(1)-(2), 12955(d) and 12980(a), Government Code.

§ 10040. Testing.

[No changes are being proposed to this section.]

§ 10041. Drafting Housing Discrimination Complaints.

(a) With the exception of HUD-generated complaints, the department shall draft the language of each housing discrimination complaint filed with the department on a complaint form prescribed by the department. The complaint shall contain all the information identified in section 12980(a) of the Government Code, and section 10038 of these regulations, and set forth the allegations in ordinary and concise language of the department's choosing, identifying the following in the body of the complaint:

- (1) the protected basis or bases for the complaint;
- (2) all relevant facts, including pertinent dates, that indicate a causal connection between the protected basis and the act of discrimination alleged;
- (3) the reason or reasons the housing provider gave the complainant to explain why the housing

benefit was denied; and

(4) the sections of the Government or Civil Code alleged to have been violated.

(b) The department may omit a complainant's address, telephone number, and e-mail address on any complaint alleging that the complainant has been subjected to violence or threats of violence including, but not limited to, sexual assault.

(c) The department shall liberally construe the facts alleged by a complainant when drafting a complaint of housing discrimination and include all relevant claims supported by the alleged facts. Once drafted, a complaint may be verified~~signed~~ by a complainant in person or sent to the complainant for verification~~signature~~ via U.S. mail, facsimile transmission, e-mail, or other electronic means. When requested in writing by an attorney or advocacy organization representing the complainant, the drafted complaint shall be sent to the attorney or advocacy organization to obtain the complainant's verification~~signature~~.

(d) The filing date of a complaint shall be the date a DFEH office receives a verified~~signed~~ complaint, regardless of whether the complaint is verified~~signed~~ by the complainant in the office or the complaint is verified~~signed~~ elsewhere and transmitted to the office via United States (U.S.) mail, ~~electronically~~ mail, private carrier mail (e.g., FedEx), facsimile, or hand delivery. ~~Where a limited exception exists where a complainant cannot verifysign a complaint for investigation before the applicable statute of limitations runs. In this limited circumstance, the department shall file the unverified~~unsigned~~ complaint and accept it as date stamp it received before the statute of limitations runs. Notwithstanding the foregoing, the department shall obtain a signature on the verified~~ unsigned complaint before it is served.

(e) No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice occurred, except that this period may be extended as set forth in section 10052 of the department's regulations.

(f) Any complainant, ~~or complainant's attorney, who~~ or advocacy organization ~~which wishes to~~ may propose modifications to the unverified~~unsigned~~ complaint ~~shall do so in writing submitted to the department via U.S. mail, private mail, facsimile transmission, e-mail, or other electronic means.~~ The department shall consider the proposed modifications and, if accepted, draft a new complaint which may be verified~~signed~~ by the complainant in person or sent to the complainant for verification~~signature~~. When requested ~~in writing~~ by an attorney or advocacy organization representing the complainant, the modified complaint shall be sent to the attorney or advocacy organization for review and to obtain the complainant's verification~~signature~~. When modifications are not accepted, the department shall in writing notify the complainant and ~~the complainant's his or her~~ attorney or advocacy organization, if any, of the reasons for rejection and send to the complainant via U.S. mail, facsimile transmission, e-mail, or other electronic means another copy of the original complaint for verification~~signature~~.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12930(f)(1)-(2), 12955(d) and 12980(a)-(b), Government Code.

§ 10042. Written Statement or Correspondence as Complaint.

(a) If the statute of limitations would expire before an intake interview could be scheduled and completed for a housing discrimination complaint, the department may promptly initiate and conduct an

intake interview by phone, without an appointment, or waive the intake process and accept a complaint for investigation using a written statement or correspondence from the complainant ~~verified~~signed under penalty of perjury. As long as the written statement or correspondence satisfies all the requirements set forth in section 12980(a) of the Government Code, alleges a claim or claims over which the department has jurisdiction, and the statutory deadline to file with the department is imminent, the department may accept such a written statement or correspondence as a complaint for filing purposes.

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~~(b) A statement shall be handwritten or typed and may be submitted electronically or by facsimile transmission to the department.~~

~~(e)~~ The department may accept a statement from a complainant's attorney as long as the complainant has ~~verified~~signed the statement of complaint or submits a ~~verified~~signed statement authorizing the attorney to ~~verify~~sign the complaint on ~~the complainant's~~his or her behalf.

~~(d)~~ When intake has been waived, an investigator shall interview the complainant as soon as practicable after the complaint is filed and file an amended complaint on the form prescribed by the department. If, during the interview, the complainant presents new facts or raises new issues not included in the original complaint, they may be included in the amended complaint as long as the new facts and/or issues are based on or relate back to the facts stated in the original complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12930(f)(1)-(2), 12955(d) and 12980(a), Government Code.

§ 10043. ~~Multiple Complainants.~~[Reserved]

~~(a) The department shall file a separate complaint for each adult party aggrieved by an alleged unlawful housing practice unless both of the following conditions exist:~~

~~(1) The complainants are married and have the same last name; and~~

~~(2) The allegations and fact situations are identical.~~

~~(b) When two separate complaints are taken, any minor children of the adult complainants shall be listed on only one of the complaints.~~

~~(1) The department shall determine which of the individual complaints should logically list the minor child complainant on the basis of such considerations as surname or legal custody.~~

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~~(2) The adult complainant shall sign the complaint on behalf of the minor child.~~

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Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12930(f)(1)-(2), 12955(d) and 12980(a), Government Code.

§ 10044. HUD-Generated Complaints.

All complaints filed with HUD that HUD refers to the department for investigation shall be directed to the department's housing ~~intake~~unit. Provided all jurisdictional requirements are met, HUD-generated complaints shall immediately be assigned a department case number. A separate intake interview

typically will not be conducted by the department before filing a HUD-generated complaint. Notwithstanding the foregoing, all other procedures applicable to housing discrimination complaints filed initially with the department shall apply to complaints filed initially with HUD, which HUD refers to the department for investigation.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12980(a), Government Code.

§ 10045. Department-Generated Complaints.

[No changes are being proposed to this section.]

§ 10046. Director's Complaints.

(a) The director, in his or her discretion, may make, ~~verifysign~~, and file a housing discrimination complaint that satisfies all the requirements of Government Code section 12980(a) and section 10041 of these regulations.

(b) The director, in his or her discretion, may file a complaint on behalf and as representative of a group or class of persons adversely affected, in a similar manner, by an alleged unlawful housing practice.

(c) Receipt of an individual complaint alleging a pattern of discrimination, or a request or referral from a source outside the department, including but not limited to other state or federal agencies, may result in the filing of a director's complaint.

(d) Factors for determining whether to file a director's complaint include, but are not limited to:

(1) whether the respondent is large enough such that the anticipated remedy would impact a large number of persons; and/or

(2) whether the complaint allegations address an important legal issue in an area where the department seeks to establish case law; and/or

(3) whether resolution of the complaint would impact civil rights in a manner consistent with the department's mission.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12961, 12980(a) and 12980(c), Government Code.

§ 10047. Class or Group Complaints.

[No changes are being proposed to this section.]

§ 10048. Retaliation Complaints - Special Considerations.

[No changes are being proposed to this section.]

§ 10049. Julie Waltz First Amendment Policy.

(a) When a complainant seeks to file a housing discrimination complaint against a person who is not an owner within the meaning of section 12927(e) of the Government Code, the department shall screen the

complaint at intake to determine whether it implicates protected First Amendment activity as described by the United States Court of Appeals for the Ninth Circuit in *White v. Lee* (9th Cir. 2000) 227 F.3d 1214 (*White*).

(b) Protected First Amendment activities described in *White* include, but are not limited to, writing and distributing signs, flyers, and newspapers or articles; engaging in expressive associational activities that advocate discriminatory policies; and petitioning the government for redress of grievances (e.g., filing of a lawsuit that is not frivolous or participating in the political or legislative process).

(c) Complaints that have been deemed at intake to meet the criteria set forth in paragraphs (a) and (b) above shall be referred to the chief counsel of the department's legal division, or ~~ahis or her~~ designated associate or assistant chief counsel, to confirm whether the criteria have been met and, if so, determine whether a complaint should be taken under the department's First Amendment policy.

(d) If the chief counsel or ~~ahis or her~~ designated associate or assistant chief counsel accepts the complaint for investigation, then the chief counsel or designated associate or assistant chief counsel shall draft the complaint. The complaint shall only include the specific allegations that are appropriately subject to the department's investigation under this policy.

(e) When a complaint is accepted for investigation under the department's First Amendment policy, legal advice shall be provided by the chief counsel of the department's legal division, or ~~ahis or her~~ designated associate or assistant chief counsel, regarding the proper scope of the department's investigation. Such legal advice shall include the following three topics:

(1) Scope of Investigation: The investigation shall be limited in a manner that would permit the department to properly investigate the complaint, but not violate the respondent's First Amendment rights. The chief counsel or chief counsel's designated associate or assistant chief counsel shall provide guidance to department staff on how the specific allegations in the complaint should be investigated. The investigation shall not be overbroad, but instead shall focus on the specific allegations that were approved for an investigation under this policy. In providing this guidance, the chief counsel or ~~ahis or her~~ designated associate or assistant chief counsel shall be mindful that activities such as distributing flyers and newsletters, lobbying public officials, and petitioning the government are protected by the First Amendment. On the other hand, acts of violence, threats, or intimidation may constitute unlawful housing discrimination that is not protected by the First Amendment. The investigation shall focus on the specific allegations that might prove a FEHA violation.

(2) Communications: The chief counsel or the chief counsel's designated associate or assistant chief counsel shall advise department staff that when communicating with a respondent, the media, or member of the public regarding an investigation under this policy, department representatives shall make clear that protected First Amendment activities do not, by themselves, constitute a violation of the FEHA.

(3) Length of Investigation: The chief counsel or ~~ahis or her~~ designated associate or assistant chief counsel shall advise department staff on the proper length of the investigation. The department shall strive to complete investigations under this policy within one-hundred (100) days. Any investigation under this policy shall be completed as expeditiously as possible, and may not exceed one-hundred (100) days without the express approval of either the chief counsel or the chief counsel's designated

associate or assistant chief counsel. Under no circumstances may an investigation under this policy exceed one-hundred-eighty (180) days.

(f) If the chief counsel or chief counsel's designated associate or assistant chief counsel approves an investigation under this policy, the investigation shall be monitored by the department's legal division. The chief counsel or ~~this or her~~ designated associate or assistant chief counsel shall assign a department staff counsel to monitor the investigation. The monitoring staff counsel shall perform the following tasks:

(1) Case Review Every Thirty (30) Days: At least once every thirty (30) days the assigned staff counsel and the enforcement division staff member assigned to investigate the complaint shall discuss the status of the investigation. Topics to discuss shall include the proper scope of the investigation, and whether the investigation will be completed within one-hundred (100) days.

(2) Formal Discovery: The assigned staff counsel shall review and approve any formal investigative discovery (subpoenas, requests for production of documents, written interrogatories) to ensure that the discovery requests are not overbroad, and are limited to the allegations that have been approved for investigation by the chief counsel or the chief counsel's designated associate or assistant chief counsel.

(3) Settlement/Conciliation: Any settlement discussions or conciliation attempts in an investigation under this policy shall be conducted by the assigned staff counsel. During any such settlement discussions or conciliation attempts, the staff counsel shall take special care to ensure that the respondent is not asked to sacrifice any protected First Amendment activity to settle the action or end the investigation. Additionally, staff counsel shall not discuss protected First Amendment activity in the context of any settlement or conciliation efforts.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12980(a) and 12980(c), Government Code; White v. Lee (9th Cir. 2000) 227 F.3d 1214; and Settlement Agreement and Stipulation of Dismissal with Prejudice, Waltz v. Brumfield, Case No. 5:08-cv-00432-JTM-OP (C.D.Cal., June 2010).

§ 10050. Medical Information - Special Considerations.

(a) Whenever a complaint includes allegations that require the department to obtain and analyze medical information, such as complaints alleging physical or mental disability discrimination or denial of reasonable accommodation, the complainant shall authorize the department in writing to request and obtain copies of all directly relevant medical records or information reasonably necessary to evaluate and prosecute the complaint.

(b) During the enforcement division's investigation, all medical records the department obtains during the investigation shall be maintained in a section of the case file clearly marked "Medical Records" or otherwise designated as "Confidential."

(c) If a civil action is filed, all directly relevant medical records or information reasonably necessary to prosecute the civil complaint, if any, may be disclosed by the department when disclosure is necessary to further prosecution and/or settlement of the claim.

(d) No medical records or information shall be disclosed by the department in response to a request for public records made pursuant to the California Public Records Act. (Gov. Code, § 6254(c).)

(e) No medical records or information shall be disclosed by the department in response to a third-party subpoena unless a Notice to Consumer/Employee has been served on the complainant and there has been no objection communicated to the department by the complainant or the complainant's attorney. (Code. Civ. Proc., §§1985.3, 1985.6, and 2020.410.)

(f) The department shall abide by complainant's attorney's requests to protect the privacy of complainant's medical information. However, if the department is unable to obtain the medical information and records it needs to investigate and/or prosecute a complainant's allegations, the department may discontinue the investigation and close the complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516 [174 Cal.Rptr. 160] [discovery of private information requires direct relevance to claim]; Sections 1985.3, 1985.6 and 2020.410, Code of Civil Procedure; and Sections 6253, 6254(c), 12927(c)(1), 12930(f)(1), 12955, 12980(a) and 12980(c), Government Code.

§ 10051. Effect of Prior Waiver Agreement/Release of All Claims.

(a) Where all other jurisdictional requirements have been met for filing a housing discrimination complaint with the department, the department shall accept a complaint where a complainant presents a signed waiver agreement or release of all claims at intake. The investigation shall initially focus on obtaining information necessary to determine whether the complainant has validly waived the complainant's ~~his or her~~ right to file a complaint with the department. Such information shall include, but not be limited to:

- (1) a description of all benefits received in exchange for signing the waiver;
- (2) the amount of time the complainant was given to consider the waiver before signing;
- (3) whether the complainant was given the opportunity to seek legal counsel before signing;
- (4) whether the complainant sought legal advice before signing;
- (5) the conditions under which the waiver was signed (e.g., whether the waiver was signed in a non-coercive atmosphere); and
- (6) whether the waiver was presented in a language understood by the complainant and/or whether interpretative services were provided.

(b) Where a respondent produces a signed waiver agreement or release of all claims during an investigation, the department shall promptly obtain information necessary to determine whether the complainant has validly waived the complainant's ~~his or her~~ right to file a complaint with the department. Such information shall include, but not be limited to, the information identified in section 10051(a) of these regulations.

(c) The department shall close any case where it has been determined that a complainant has validly

waived ~~the complainant's his or her~~ right to file a complaint with the department unless the department determines that:

- (1) the complaint alleges an unlawful systemic policy or practice that adversely affects a large number of tenants or applicants;
- (2) an anticipated affirmative remedy would impact a large number of tenants or applicants, or an entire industry, in a manner consistent with the department's mission; and/or
- (3) the complaint allegations address an important legal issue in an area where the department seeks to establish case law.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12920, 12930(f)(1), 12980(a) and 12980(c), Government Code.

§ 10052. Complaints Taken After Expiration of Statute of Limitations Due to Department Error.
[No changes are being proposed to this section.]

§ 10053. Service of Complaints.

- (a) The department shall initiate service upon all respondents named in a verified housing discrimination complaint within ten (10) working days after the complaint is filed.
- (b) The date of service is the date the complaint is placed in the mail (certified mail only) or personally delivered to the respondent.
- (c) All department service documents shall be ~~placed in an envelope~~ clearly marked "PERSONAL AND CONFIDENTIAL: TO BE OPENED BY ADDRESSEE OR DESIGNATE ONLY." ~~regardless of whether the documents are served by personal service or certified mail with return receipt requested.~~
- (d) If a complaint sent via certified mail to a respondent's correct last known address is returned as undeliverable, or if the respondent refused service, the department shall promptly initiate steps to re-serve the complaint including, but not limited to, personal service of the verified complaint.
- (e) The department may forego serving by certified mail and promptly initiate personal service whenever the circumstances warrant.
- (f) The department shall allow a complainant to rescind a verified complaint prior to service and if a complaint is rescinded, the department will not serve the complaint. Complainant must submit a signed written verification that they are requesting to rescind a complaint prior to service and acknowledge they understand the complaint will not be investigated. Should they wish to proceed with it, they would have to submit a new pre-complaint inquiry.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12986, Government Code.

§ 10054. Amending Complaints.

(a) The department may amend an open housing discrimination complaint to:

- (1) add bases or allegations for which the statute of limitations has not run;
- (2) add or delete facts or change the wording of a complaint;
- (3) cure technical defects or omissions, including correcting a case number, address, or name of a party; ~~the name of a respondent;~~
- (4) add new bases, respondents, or complainants after the expiration of the one-year statute of limitations where the amendment either relates back to the same material facts set forth in the original complaint, or the original complaint contains language that specifically references or identifies the bases, respondents, or complainants to be added;
- (5) add an allegation of retaliation after the one-year statute of limitations has run where the alleged retaliatory conduct is the same conduct complained of in the original complaint (e.g., termination of lease) for which another discriminatory basis was originally alleged (e.g., request for reasonable accommodation).
- (6) add class or group allegations to an individual complaint and pursue the complaint as a class or group complaint.

(b) When an open complaint of discrimination has been amended:

- (1) respondents shall be given sufficient notice and time to respond to new allegations;
- (2) the filing date of the amended complaint remains the same as the original filing date.

(c) The department shall not amend an open complaint to add:

- (1) allegations that are beyond the one-year statute of limitations if the allegations relate to a different set of facts than those alleged in the original complaint;
- (2) bases or allegations that would have been rejected if raised at intake;
- (3) bases or allegations refuted by evidence obtained during the investigation.

~~(d) The department shall handle nonsubstantive changes to an original complaint, such as correcting an incorrect case number, incorrect address or misspelled word, or other clerical errors, by correcting the original complaint, not by amending it.~~

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12980(a) and 12980(c), Government Code.

§ 10055. Response to Complaint.

[No changes are being proposed to this section.]

§ 10056. Conciliation.

[No changes are being proposed to this section.]

§ 10057. DFEH Dispute Resolution~~Mediation~~ Division Services.

(a) The department may offer the parties to a complaint filed for investigation the opportunity to mediate the complaint before investigation commences (“pre-investigation mediation”). One or both parties to a complaint filed for investigation also may request pre-investigation mediation. Pre-investigation mediation conferences are not attended by any representative of the department’s enforcement or legal divisions.

(b) Pre-investigation mediation is voluntary. Therefore, the department shall not assign a pre-investigation complaint to a mediator to mediate unless both the complainant and respondent (or their respective attorneys or advocacy organizations, if any) have agreed to mediate.

~~(bc)~~ While a pre-investigation complaint is with the dispute resolution~~mediation~~ division, the requirement to submit a response to the complaint is temporarily suspended. However, if mediation is declined or is unsuccessful, a response shall be provided to the department no later than twenty-one (21) days after the date the department notifies the respondent that a response is due because mediation was declined or was unsuccessful. After the complaint is returned for investigation, the enforcement division shall in writing notify the respondent or, if the respondent is represented, the respondent’s attorney, of the exact date the response is due.

~~(ed)~~ After an investigation finds ~~no~~ reason to believe that discrimination has occurred or is about to occur, and prior to filing a civil action, the department shall require the parties to participate in mandatory dispute resolution in an effort to resolve the dispute without litigation. Offering a reasonable opportunity to mediate satisfies the department’s obligation under section 12981 of the Government Code to eliminate the unlawful practices through conciliation or mediation even if one or both of the parties refuse to participate. ~~The department also may offer the parties to a complaint filed for investigation the opportunity to mediate the complaint after investigation (“post-investigation mediation”). Post-investigation mediation conferences conducted before a civil action is filed (“pre-action”) shall be attended by a representative of the department’s enforcement division. The enforcement division representative may be the investigating office’s assigned staff counsel. If a post-investigation mediated settlement is reached pre action, the enforcement division representative who participated in the mediation shall not sign the settlement agreement. If a settlement is not reached, and the enforcement division’s mediation representative was the investigating office’s assigned staff counsel, the legal division shall not assign the same staff counsel to file and prosecute the civil complaint in the matter.~~

~~(de)~~ Post-investigation mediation conferences conducted after a civil action is filed (“post-civil action”) shall be attended by the member of the department’s legal division who filed the civil action or who has subsequently been assigned the case. If settlement is reached, the legal division representative shall sign the settlement agreement. ~~If settlement is not reached, the same staff counsel who filed the civil action and mediated the matter may prosecute the case.~~

~~(e)~~ If, after investigation, the department determines that the complaint is valid and offers the parties mediation, such offer satisfies the department’s obligation under Government Code section 12963.7 to

~~“immediately endeavor to eliminate the unlawful ... practice complained of by conference, conciliation, and persuasion,” regardless of whether the mediation occurs before or after the department files a civil action.~~

(f) Regardless of whether the department refers a complaint to the dispute resolution~~mediation~~ division before or after investigation has commenced, the department shall suspend investigation while the complaint is with the dispute resolution~~mediation~~ division. After mediation is declined or is unsuccessful, the department shall commence, resume, or complete the investigation as necessary.

~~(g) Mediation is voluntary. Therefore, the department shall not assign a complaint to a mediator unless both the complainant and respondent (or their respective attorney or advocacy organization, if any) agree to mediate.~~

~~(hg)~~ When both sides agree to mediate a complaint pre-~~investigation~~action, the department may assign the complaint to a ~~trained volunteer mediator or a~~ trained mediator employed by the department’s dispute resolution~~mediation~~ division or a trained volunteer mediator, based on mediator availability and the department’s discretion. Whenever a complainant or respondent is represented by an attorney or advocacy organization, the assigned mediator shall communicate with the party’s attorney or advocate regarding scheduling and settlement. Matters the legal division refers for mandatory dispute resolution shall be assigned to a DFEH attorney mediator.

~~(ih)~~ Except as otherwise required by law, nothing that is said or done in the course of the mediation process may be made public. However, settlement agreements shall be made public unless the parties request nondisclosure and the director, or a designated representative, determines that disclosure is not required to further the purposes of the laws enforced by the department. Circumstances that may result in partial or complete nondisclosure of a conciliation agreement may include, but are not limited to:

(1) Claims involving allegations of sexual harassment;

(2) A complainant’s physical or mental condition, or medical diagnoses; or

(3) Claims involving circumstances that, if disclosed, could create a safety risk, including the fact that a complainant is a resident in a domestic violence shelter or other protected residence.

~~The mediation process is confidential, including, for pre-action mediations, any settlement agreement entered into by a complainant and respondent, and the terms thereof. However, the following are not confidential:~~

~~(1) issues established as fact during the investigation;~~

~~(2) post-action settlement agreements and the final terms of settlement; and/or~~

~~(3) new facts presented by the respondent at a post-investigation mediation conference that cause the department to re-evaluate the case and determine not to file a civil action. A respondent providing such information at a mediation conference shall authorize the department to use the information to close the case.~~

(ji) Any written settlement agreement reached through a DFEH dispute resolution~~mediation~~ division conference may be used as evidence to enforce the terms of the settlement agreement if the conditions of

Evidence Code section 1123 are satisfied and the agreement contains language showing the intent of the parties to be bound by the agreement's terms.

(j) All DFEH-mediated settlement agreements shall include "affirmative relief." Affirmative relief may include individual relief to make the complainant whole such as approving or restoring a housing opportunity, approval of a reasonable accommodation request, and relief in the public interest to prevent future discrimination or harassment such as training, the development of policies or practices, and affirmative advertising to prevent future discrimination or harassment, reporting requirements, and monitoring compliance with settlement terms. DFEH mediators assist parties to select the affirmative relief that is best suited to the housing complaint at issue. Agreements shall also include reporting and monitoring provisions to ensure compliance with settlement terms.

(k) A copy of any settlement agreement executed in connection with a DFEH dispute resolution~~mediation~~ division conference shall be provided to the department's dispute resolution~~mediation~~ division.

(l) DFEH complaints resolved through~~through~~ mediation shall be closed by the department.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 1119, 1120 and 1123, Evidence Code; and Sections 12930(f) and 12963.7, Government Code.

§ 10058. Complaint Investigation.

[No changes are being proposed to this section.]

§ 10059. Investigative Subpoenas.

[No changes are being proposed to this section.]

§ 10060. Investigative Requests for Production and Inspection.

[No changes are being proposed to this section.]

§ 10061. Priority Case Processing/Case Grading System.

[No changes are being proposed to this section.]

§ 10062. [Reserved]~~Investigations Not Completed Within Statutory Time Limit.~~

~~(a) Where an investigation is not completed within the statutory time limit the department may:~~

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- ~~(1) continue the investigation;~~
- ~~=~~
- ~~(2) taking into consideration the complexity of the case, time necessary to complete the investigation, and likelihood of proving discrimination, close the case where continued investigation would be an inefficient use of the department's resources; or~~
- ~~=~~
- ~~(3) if the case is dual filed with HUD, waive the case to HUD for continued investigation;~~
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~~(b) When an investigation is completed after the statutory time limit and the complaint has been found meritorious, the department shall schedule a conciliation or mediation conference.~~

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~~(e) The department shall not file a civil action when an investigation is completed after the statutory time limit and a complaint has been found meritorious. However the director, in his or her discretion, may issue a director's complaint if otherwise appropriate under section 12980 of the Government Code and section 10046 of these regulations.~~

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~~Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12930(h), 12963, 12965, 12980(e), 12980(f) and 12981(a), Government Code.~~

§ 10063. Civil Actions.

(a) If, after investigation, it is determined by the department that ~~a complaint has merit~~discrimination has occurred or is about to occur, and the alleged violation has not been remedied through conference, conciliation, mediation, or persuasion, or otherwise, the director, ~~in his or her discretion, shall~~may file a civil action in the name of the department. ~~The discretion to file a civil action may be delegated to the department's chief counsel or his or her designated associate or assistant chief counsel.~~

(b) An action may be filed, if at all, only after the department has offered mandatory dispute resolution in accordance with section 10057 of these regulations~~an unsuccessful post investigation conciliation or mediation conference or, if circumstances warrant, the department may file a civil action without holding a conciliation or mediation conference.~~

(c) ~~In making the determination that a complaint has merit~~In making the determination whether discrimination has occurred or is about to occur, the department shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action. ~~The department has discretion not to file a civil action when circumstances warrant.~~ Factors considered by the department in making such a determination~~when determining whether to file a civil action~~ include, but are not limited to: (1) the strength and sufficiency of the evidence of unlawful conduct; and (2) the likelihood of prevailing on the merits at hearing or trial; (3) ~~whether the alleged violation addresses an important legal issue in an area where the department seeks to establish case law;~~ (4) ~~whether filing the civil action and subsequent litigation thereof are likely to impact civil rights in a manner consistent with the department's mission;~~ and/or (5) ~~whether the respondent has offered the complainant an equitable remedy the complainant has refused.~~

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(h), 12965, 12981(a) and 12981.1, Government Code.

§ 10064. Notice of Case Closure.

[No changes are being proposed to this section.]

§ 10065. Departmental Appeal.

(a) Any person who wishes to appeal the department's decision to reject a complaint or close a case may appeal to the director, or to the director's designee, within 10 days following notification of the department's decision. The appeal shall set forth specifically and in full detail the grounds upon which the appealing party considers the department's determination to be unjust or unlawful, and every issue to be considered by the director or the director's designee. The director or the director's designee may consider any issue relating to the initial decision and may modify, affirm, or reverse the decision, including by reopening the investigation. The director's designee in responding to appeals shall be a

~~person who does not directly supervise the department employee who made the initial decision to reject a complaint or close a case. The decision of the director or the director's designee is final and may not be appealed to any other department employee, officer, or other individual delegated any function, power, or duty of the department. Any person who wishes to appeal the department's decision to reject a complaint or close a case shall direct his or her concerns to the district administrator or, if there is no district administrator, the regional administrator of the office that rejected or closed the complaint. Appeals may be presented verbally by telephone or in writing.~~

(b) When an appeal is completed after the statutory time limit and the department has determined that discrimination has occurred or is about to occur, the complaint has been found meritorious, the department shall schedule a conciliation or mediation conference.

~~(b) Regardless of whether an appeal is oral or written, the district administrator or, if there is no district administrator, the regional administrator, or other individual delegated any function, power, or duty of the district or regional administrator, shall respond in writing. Where the appeal concerns a complaint rejected for investigation, the district or regional administrator, or his or her designee, also shall draft a complaint for filing purposes only, to be included with the written response.~~

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~~(c) Any person dissatisfied with the response of the district administrator may direct his or her further appeal to the regional administrator or his or her designee.~~

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~~(d) Regardless of whether the further appeal is oral or written, the regional administrator, or other individual delegated any function, power, or duty of regional administrator, shall respond in writing.~~

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~~(e) Any person dissatisfied with the response of the regional administrator may direct his or her further appeal to the chief of enforcement.~~

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~~(f) Regardless of whether the further appeal is oral or written, the chief of enforcement, or his or her designee, shall respond in writing.~~

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~~(g) Any person dissatisfied with the response of the chief of enforcement may direct his or her further appeal to the director.~~

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~~(h) Regardless of whether the further appeal is oral or written, the director, or his or her designee, shall respond in writing.~~

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~~(i) The decision of the director is final and may not be appealed to any other department employee, officer, or other individual delegated any function, power, or duty of the department.~~

(j) Any concerns regarding the handling of an open complaint shall be directed to the district administrator or, if there is no district administrator, the regional administrator of the office where the complaint is being investigated.

~~(k) Any person dissatisfied with the response of the district administrator, or his or her designee, may direct his or her concerns to the regional administrator.~~

~~(l) Any person dissatisfied with the response of the regional administrator, or his or her designee, may direct his or her concerns to the chief of enforcement.~~

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(m) ~~The response of the chief of enforcement, or other individual delegated any function, power, or duty of the chief of enforcement, is final and may not be appealed to any other department employee or officer while the complaint is open. After the complaint is closed, any remaining concerns may be directed to the director, whose response, and/or the response of his or her designee, shall be final and nonappealable to any other department employee, officer, or other individual delegated any function, power, or duty of the department.~~

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(n) ~~Any respondent who wishes to complain about the filing of a civil action against the respondent shall direct his or her concerns to the chief counsel of the department's legal division.~~

Note: Authority cited: Section 12930(e), Government Code. Reference: Reference: Sections 52(f) and 54.3(b), Civil Code; and Sections 12965, 12971, 12980(a), 12980(c), 12981(a) and 12981.1, Government Code.

§ 10066. Substantial Equivalence.

[No changes are being proposed to this section.]