

December 17, 2021

Lourdes M. Castro Ramirez, Secretary
California Business, Consumer Services and Housing Agency
915 Capitol Mall, Suite 350-A
Sacramento, CA 95814

Dear Secretary Lourdes M. Castro Ramirez,

In accordance with the State Leadership Accountability Act (Leadership Accountability), the Department of Fair Employment and Housing submits this report on the review of our internal control and monitoring systems for the biennial period ending December 31, 2021.

Should you have any questions please contact Mike Miller, Deputy Director of Administration, at (916) 585-7064, mike.miller@dfeh.ca.gov.

GOVERNANCE

Mission and Strategic Plan

The Department of Fair Employment and Housing (DFEH) is the institutional centerpiece of California's broad anti-discrimination and hate violence policy. Born out of a decades-long struggle to prohibit discrimination in employment, housing, and business establishments, the DFEH has been at the forefront of protecting civil rights in California since its inception. Today, the Department of Fair Employment and Housing is the largest state civil rights agency in the country with more than 300 permanent staff operating out of six offices throughout California.

The mission of the DFEH is to protect the people of California from unlawful discrimination in employment, housing and public accommodations (businesses) and from hate violence and human trafficking. To accomplish this mission, the Department receives, investigates, conciliates, mediates, and prosecutes complaints of alleged violations of the Fair Employment and Housing Act (FEHA), Unruh Civil Rights Act, Disabled Persons Act, Ralph Civil Rights Act, the California Trafficking Victims Protection Act, and other laws. The DFEH receives approximately 28,000 complaints annually from members of the public who allege that they have been the victim of discrimination or hate violence.

In addition to investigating, prosecuting and mediating complaints, the DFEH engages in public outreach and provides training and technical assistance to employers, business establishments, and housing providers regarding their responsibilities under the law. The employment anti-discrimination provisions of the FEHA apply to public and private employers, labor organizations and employment agencies. "Housing providers" include public and private owners, real estate agents and brokers, banks, mortgage companies, and financial institutions.

The Department also partners with law schools and universities in California to provide students hands-on experience in investigating, mediating and prosecuting FEHA cases. Since 2013, the Department has housed the Fair Employment and Housing Council (FEH Council), a body that issues regulations to ensure that the FEHA is interpreted and implemented in a way that is fair and that protects the public to

the full extent of the law.

STRATEGIC GOALS

Goal 1: Increase access to information about rights and responsibilities

Objective #1: Improve the resources we make available and address specific identified areas of need

Objective #2: Improve outreach to people with limited English proficiency

Objective #3: Improve outreach to people with disabilities

Objective #4: Aim for the greatest impact for every dollar we spend

Goal 2: Prevent and combat discrimination and hate violence through proactive and strategic efforts

Objective #1: Integrate a sophisticated understanding of discrimination into our work and pursue cases and strategies that will have the greatest impact

Objective #2: Help to foster best practices within California state and local government

Objective #3: Model the way for best practices in civil rights

Goal 3: Provide excellent service to the individuals and entities who interact with us

Objective #1: Ensure our services are user-friendly, accessible and consistent across all platforms

Objective #2: Decrease complexity and improve timeliness of services by streamlining processes

Objective #3: Improve the services we provide to persons with disabilities

Objective #4: Improve our ability to serve people with limited English proficiency

Goal 4: Ensure that our internal processes and systems effectively and efficiently meet our business needs

Objective #1: Improve how we gather and manage information

Objective #2: Ensure that all of our policies and procedures are up-to-date and that we know where to find them and how to use them

Objective #3: Develop standards and tools for measuring our performance *Objective #4:* Continually evaluate and improve our internal processes and systems

Goal 5: Give our employees the information, tools and support they need to thrive

Objective #1: Improve our ability to communicate clear expectations, provide actionable feedback and recognize excellence

Objective #2: Provide everyone with the training they need to be effective in their jobs

Objective #3: Improve information, tools and resources provided to staff

Objective #4: Provide staff with more professional development resources

Control Environment

DFEH management has instituted integrity, accountability and fairness among its core values. The DFEH Director and Chief Deputy preside over an Executive Committee with oversight of each aspect of the organizational structure in order to ensure appropriate levels of responsibility and authority. DFEH has established clear policies and procedures to maintain documentation of its control systems, including its departmental Equal Employment Opportunity policy, which prohibits discrimination, harassment and retaliation and encourages all personnel to report ethical issues. DFEH establishes and maintains a competent workforce through fair and objective hiring practices, a dedicated training unit, an Upward Mobility plan and merit-based promotional opportunities.

DFEH documents its processes for internal controls in multiple forms, including the SLAA, Business Continuity and Disaster Recovery Plans, the IT Security Manual, safety/security emergency evacuation plans, and multiple other policies and procedures, including Workplace Violence Prevention, Injury and Illness Prevention and more. All policies are shared with labor organizations and posted on the department's intranet with department-wide announcements to staff members. Volunteers help support safety/security emergency evacuation plans with semi-annual training sessions.

Managers evaluate staff performance during probationary periods after hire, and then complete annual performance appraisal summaries and individual development plans, as well as upward mobility plans for those in specified lower-paying classifications. Deficiencies are corrected through performance improvement plans, training or re-training, and preventive measures prior to resorting to progressive discipline.

VALUES

Our values shape us as an organization. We look to these values to drive our decisions and actions every day and to define how we behave toward each other and the people we serve. Because our values are so integral to who we want to be as an organization, everyone at DFEH had opportunities to help define and select them. Our values are:

Accountability

Individuals, businesses, nonprofit organizations, other government entities and California taxpayers count on us to do our work accurately, thoroughly and timely. We hold ourselves responsible for meeting these expectations every day.

Commitment to Justice

We are entrusted with enforcing the laws that oppose discrimination and hate violence in California. We honor that trust and are committed to advancing the public interest and ensuring a just outcome for all parties in every case we handle.

Customer Service

We recognize that everyone with whom we interact is a person worthy of our compassion and respect. We are professional, responsive, and inclusive in our dealings with external and internal customers.

Excellence

We have the opportunity to make a difference in people's lives and in the life of our state. Our impact depends on our wise use of resources, ensuring our workforce has adequate training, and continually evaluating our processes to ensure the highest level of excellence in everything we do.

Fairness

We recognize the importance of being fair and objective in our investigations, mediations, and prosecutions, and in all of our interactions with the public and with each other. We provide everyone with equal access and opportunities.

Integrity

We honor ourselves, each other and the public we serve when we are honest with our words and ethical in our actions. We strive for transparency in everything we do.

Teamwork

We bring together our diverse experiences, knowledge and skills to better serve the public and to make the DFEH the best it can be. We help each other and work together to advance our goals and improve outcomes across the entire organization.

Information and Communication

DFEH uses multiple channels to communicate across the entity, including weekly executive staff meetings comprised of all divisional leaders to discuss operational, programmatic and financial issues, weigh risks and responses and make critical decisions. Executive Staff report activities toward monitoring and addressing corrective action items and results to the Director and Chief Deputy Director via monthly written reports. Units hold weekly staff meetings and one-on-ones with employees to disseminate important information. DFEH utilizes SharePoint and Microsoft 365 in addition to the department's intranet to store and distribute policies, procedures, directories, forms and other resources. In addition, the department distributes daily, weekly and monthly updates of media accounts either directly mentioning or relevant to the department or its mission and holds quarterly and annual all-staff meetings which are video-broadcast to all offices.

Employees are empowered to report inefficiencies or inappropriate actions to any manager or to the department's EEO officer. In addition, an Employee Action Committee was formed to give employees an ongoing forum for providing input to Executive Management regarding ideas for improvements to our work environment, and to facilitate cross-divisional communication. This team is led by employees and the team consists solely of employees, with at least one representative from each DFEH worksite.

DFEH has a dedicated education and outreach unit which specializes in communication to outside entities regarding the department's mission and goals, including educational materials, seminars and public relations campaigns. The Fair Employment & Housing Council holds quarterly public meetings which are live-streamed, as well as occasional hearings regarding relevant civil rights topics. DFEH produces an annual report for the Governor and Legislature detailing the volume, bases, demographics and locations of complaints filed, and cases mediated or litigated. DFEH also works closely in tandem with federal partners, the Equal Employment Opportunity Commission (EEOC) and Housing and Urban Development (HUD).

MONITORING

The information included here discusses the entity-wide, continuous process to ensure internal control systems are working as intended. The role of the executive monitoring sponsor includes facilitating and verifying that the Department of Fair Employment and Housing monitoring practices are implemented and functioning. The responsibilities as the executive monitoring sponsor(s) have been given to: Mike Miller, Deputy Director of Administration.

Executive management, together with their program managers, are charged with reviewing and analyzing their program areas and business processes to identify potential issues that may impact their ability to carry out the department's mission. Identified risks are reported to the DFEH Director and Chief Deputy Director via monthly reporting or sooner depending on the severity of the issue. Division Chiefs are responsible for developing, implementing, and monitoring corrective action plans to address the risks. Additionally, identified vulnerabilities, risks, and/or threats are discussed with executive team members at weekly meetings. DFEH's executive team consists of the Director, Chief Deputy Director, and seven Division Chiefs who oversee the department's Administration, Communications, Dispute Resolution, Enforcement, Executive Programs, Information Technology, and Legal divisions. The Director, Chief Deputy Director and, in some cases the executive team, review, discuss, and monitor the corrective action plans to ensure progress is being made toward eliminating the risks.

Corrective action items identified in the current SLAA report are reviewed, discussed, and monitored by the DFEH executive team. All items in the plan will be addressed by December 31, 2021.

Other identified vulnerabilities are discussed regularly among Executive Staff during weekly meetings. Upon identification of a deficiency, the Division Chief in the area in which the deficiency has been identified is responsible for developing, implementing, and monitoring a corrective action plan. The Director and Chief Deputy Director monitor the plan to ensure progress is being made toward correcting the deficiency.

The Department of Fair Employment and Housing continues to implement and document ongoing monitoring processes as outlined in the monitoring requirements of California Government Code sections 13400-13407. These processes include reviews, evaluations, and improvements to the Department of Fair Employment and Housing systems of controls and monitoring.

RISK ASSESSMENT PROCESS

The following personnel were involved in the Department of Fair Employment and Housing risk assessment process: executive management, middle management, and front line management.

The following methods were used to identify risks: brainstorming meetings, ongoing monitoring activities, audit/review results, other/prior risk assessments, questionnaires, consideration of potential fraud, and performance metrics.

The following criteria were used to rank risks: likelihood of occurrence, potential impact to mission/goals/objectives, timing of potential event, potential impact of remediation efforts, and tolerance level for the type of risk.

In addition to engaging in ongoing processes for identifying and planning for the mitigation of risks, the Department takes additional steps in preparing its SLAA report. The SLAA Coordinator presents

Executive Staff and the management team with SLAA information including a series of questions related to risks in our environment. Each Division Chief and subordinate managers were required to review their individual areas utilizing these questions to identify any significant issues that could potentially impact the Department's ability to effectively carry out its mission.

To begin this process of identifying risks, Executive Staff and the management team were presented with a series of questions, examples of which are:

- What is our greatest legal exposure?
- What might prevent us from fulfilling our mission?
- What could go wrong in meeting a particular goal, objective, or critical function?
- How could someone steal from your unit?
- Is cash received handled properly?
- How could we lose credibility with control agencies, the Legislature, the public?
- What might cause a potential disruption in our operations?

Executive Staff then developed a list of potential risks. Risks were prioritized based on severity and timeliness of a plan of action and implementation. Those risks that could be quickly remedied were placed at the bottom of the list. Risks that have a severe and likelihood of impact but require a longer period to correct were placed at the top of the list and included in this report.

RISKS AND CONTROLS

Risk: Legal Services DOJ Exemption

Empowered by the Fair Employment & Housing Act, DFEH retains the authority to receive, investigate, conciliate, mediate and prosecute complaints alleging violations of multiple Civil, Penal, Labor and Education Codes. Although DFEH is statutorily authorized to, and does, employ attorneys to represent the department in its enforcement actions and for other purposes (see Government Code (GC) § 12930), DFEH periodically executes legal services contracts with experienced outside counsel for legal defense, legal advice or legal services (Public Contracting Code 10335.5), often during intense litigation with tight timeframes. Generally, GC 11040(c) requires state agencies to obtain Office of the Attorney General (OAG) consent to hire in-house counsel or to contract with outside counsel, and GC 11042(a) applies this requirement to judicial and administrative adjudicatory proceedings in which the agency is interested or a party. However, GC 11041 specifically exempts numerous state entities from having to obtain this exemption, including the Division of Labor Standards Enforcement (DLSE) of the Department of Industrial Relations and "any state agency which, by law enacted after Chapter 213 of the Statutes of 1933, is authorized to employ legal counsel." While DFEH falls within this catch-all category of exempt agencies, the Department of General Services continues to require OAG consent before it will approve contracts between DFEH and outside counsel to represent the department, causing costly delays and extra work. In addition, this requirement may delay or even damage DFEH's attempts to enforce civil rights law as there are frequent occasions when OAG and DFEH's competing prosecutorial and defense strategies are in direct opposition to each other and create a conflict of interest.

Control: Legislative Proposal / OAG Blanket Exemption

DFEH has drafted and submitted both a legislative concept and legislative proposal to amend GC

11041 to expressly name DFEH among the entities exempted from having to obtain the OAG's consent prior to hiring in-house or outside counsel. This proposal will not only clarify existing law and improve government efficiency for all agencies involved, but also will create greater parity between DFEH and DLSE, both of which enforce parts of California's employment law and which have some overlapping jurisdiction.

In addition, DFEH continues to request OAG exemptions for specific cases while building a relationship with the OAG for a blanket exemption of all outside legal counsel needs. DFEH expects that receiving this exemption will accelerate its investigations into violations of the Fair Employment & Housing Act (FEHA).

Risk: General Counsel Workload

The DFEH Legal Division is charged with investigating and, where necessary, prosecuting employers, housing providers and businesses providing public accommodations who violate the state's antidiscrimination laws. Since 2012 the Legal Division has been authorized to recover reasonable attorney fees as the prevailing party in litigation or as part of settlements. As the DFEH has grown, the need for general counsel (GC) work, including attorney review of operational matters, contracts, and personnel decisions, has grown. The need for legal review has likewise increased, including input into:

- important administrative decisions
- defensive litigation oversight
- representation of DFEH personnel when subpoenaed to testify in third party actions
- Enforcement Division support as legal issues arise in the course of investigations
- review and analysis of legal issues regarding PRA requests
- legislative and regulatory work of the Executive Programs Division

These important functions are currently being performed by Legal Division attorneys who do so at the expense of their responsibilities to investigate and prosecute violations of the Fair Employment and Housing Act (FEHA). The hours spent on GC matters are hours that cannot be recovered as attorney fees in successful investigations and litigation and, risk burnout among attorneys tasked with managing both prosecutorial and in-house duties.

Control: Funding Negotiations

DFEH continues to work with the Department of Finance to enhance staffing levels. The Legal Division seeks funding for attorney and administrative support positions for a General Counsel Unit (GCU). The GCU would provide dedicated support to the Director and other divisions within the department and allow existing attorneys to focus on their responsibilities to investigate and prosecute violations of the FEHA.

Risk: Statewide Hate Crime Hotline

SB 170 (chaptered September 23, 2021) appropriated \$10,000,000 to DFEH for the administration and implementation of a Statewide Hate Crime Hotline with funds available for encumbrance and expenditure until June 30, 2025. DFEH lacks existing resources to manage a program of this type, size and length without additional support.

Control: Funding Negotiations

DFEH continues to work with the Department of Finance to enhance staffing levels to manage this program, interface with experienced community-based organizations and track funding and disbursements, as well as analytical support to process contracts or grants associated with it.

Risk: Public Records Act Workload

As DFEH's caseload, high-profile litigations, and other activities have increased, DFEH has seen an increase in Public Records Act (PRA) requests, including a steady increase in complex requests that require a significant amount of work to process, and a steady increase in media inquiries that require particularly fast responses. DFEH also requires a dedicated attorney position to address complex legal questions that require extensive research and analysis to ensure that the PRA work of the department is accurate, follows the law, and is completed in a timely manner. Each month, DFEH processes between 400 and 600 PRA requests. Currently, there is a backlog of 201 PRA requests. Prompt access to public records is required by the California Public Records Act (CPRA) (Government Code 6253). An agency has 10 days to respond to a request, either by providing the information, or providing a detailed explanation as to what information may be released or what cannot because it is protected by law. Failure to meet these deadlines could expose the department to costly and damaging litigation.

Control: Temporary Staffing/Funding Negotiations

DFEH continues to work with the Department of Finance to enhance staffing levels. In the meantime, PRA staff are working overtime to try to respond in a timely fashion and the unit has hired a temporary retired annuitant to assist in processing both the backlog and new PRA requests. The permanent resources being requested will enable DFEH to cease overtime and paying a retired annuitant to remain current with the PRA workload, and allow the manager of the PRA Unit to more fully focus on system-wide strategies and efficiencies rather than, as is currently necessary, to meet DFEH's PRA obligations, processing individual PRA requests.

Risk: Vacancy Management

After the onset of the COVID-19 pandemic starting in March 2020 and a shift to mandatory telework, all state agencies, including DFEH, experienced a wave of employees opting to pursue other employment opportunities, moving out of California, or leaving state service entirely. DFEH was also authorized for 32 new positions through the Budget Change Proposal process effective July 2021. Internal promotions and transfers created additional vacancies that the department must advertise, recruit and fill in order to continue to effectively serve the public and fulfill its mission. A high vacancy rate and shortage of staffing inhibits DFEH's ability to fulfill its mission to protect the citizens of California from harassment, discrimination and retaliation.

Control: Hiring Emphasis/Continuous Filings

DFEH has created a hiring plan for the divisions with the highest vacancy rates with target dates for job postings, interviews and projected hiring dates in order to decrease the department's overall vacancy rate. DFEH has also instituted continuous job postings for positions with the highest turnover rates - front-line investigator analysts, made up of Staff Service Analysts (SSA) and Associate Governmental Program Analysts (AGPA). Each quarter, enforcement units will

receive, review and score applications for their number of vacant positions, then schedule interviews and hire candidates. DFEH continues to change vacant SSA/AGPA positions into interchangeable positions so that when an SSA incumbent becomes eligible for and meets the minimum qualifications for promotion to AGPA, the transition can be accomplished by a promotion in place, which does not create a true vacancy and does not require the time and effort involved in a full recruitment.

Risk: Bay Area Office

DFEH has 6 physical office locations statewide: Elk Grove (headquarters), Los Angeles, Fremont, Riverside, Fresno and Bakersfield. Departmental staffing has increased 30 percent over just the last two fiscal years with additional positions and supportive funding approved through the BCP process. In recruiting candidates for attorney positions, the DFEH Legal Division has found that its most qualified and desirable candidates currently reside in the East and North Bay area. The most recent recruits currently work remotely and require dedicated office space, along with space for the additional legal support resources approved through the BCP process. An East Bay area location is also desirable because recruitment and retention efforts in the current Fremont office have proven challenging. Prospective candidates for both attorney and investigate staff indicate that the drive or commute time to Fremont is too time-consuming. During the past two years, DFEH hired 8 investigators who were hired, trained, and subsequently left DFEH. In exit interviews, they indicated that the commute was the single biggest contributing factor in their departure. DFEH gravitated toward potential office space in the Oakland area due to lower costs compared to San Francisco, and because Alameda and San Francisco counties combined (9 percent) account for the largest number of DFEH complaints investigated behind Los Angeles, Orange, Sacramento and Riverside/San Bernardino counties combined (59 percent). For these reasons, DFEH has focused its efforts on opening a new office in Oakland and closing the existing Fremont location. Risks to this process include: Timing - the existing soft-term Fremont lease expires May 31, 2022 and we must provide 60 days' notice before vacating the premises; Location; Cost; and Adequate Office Size.

Control: Facilities Funding/Site Search

DFEH worked in conjunction with the Department of General Services (DGS) to estimate the amount of space needed and potential lease costs as well as one-time costs associated with a new Oakland office. DFEH received BCP approval for additional facilities funding to support an Oakland office in FY 2021-22. DGS renewed the Fremont lease temporarily, conducted an East Bay site survey and identified a suitable Oakland location in summer 2021. Negotiations on a potential lease continue.

Risk: Dispute Resolution Division Transition

The DFEH Dispute Resolution Division (DRD) maintains direct oversight of cases that could benefit from mediation after investigation through the department's main civil rights programs to prevent unlawful discrimination, harassment and retaliation. Eleven years after founding DRD and serving as its only leader, and after 19 years with DFEH, the Deputy Director of DRD will retire December 31, 2021. Increased workloads, new state laws, an expanded staff and increased complexity of complaints received have created a workload and under-classification issue for the Assistant Chief Counsel civil service classification formerly assigned to this position.

Control: Recruitment/Change Management

DFEH submitted and received CalHR approval to change the position from Assistant Chief Counsel to a Career Executive Assignment with an attorney emphasis. DFEH anticipates hiring a skilled, experienced replacement candidate by January 1, 2022, then onboarding and training the candidate while progressing through a change management process with the entire division. DFEH expects that this high-level position and incumbent candidate, as well as executive management guidance, will be able to effectively support employees, customers and cases throughout the transition.

CONCLUSION

The Department of Fair Employment and Housing strives to reduce the risks inherent in our work and accepts the responsibility to continuously improve by addressing newly recognized risks and revising risk mitigation strategies as appropriate. I certify our internal control and monitoring systems are adequate to identify and address current and potential risks facing the organization.

Kevin Kish, Director

CC: California Legislature [Senate (2), Assembly (1)]
California State Auditor
California State Library
California State Controller
Director of California Department of Finance
Secretary of California Government Operations Agency