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Department of Fair Employment and Housing history

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Fair Employment Practices Legislation

By Morroe Berger

IT IS nearly six years since New York State enacted its pioneering law applying modern administrative methods to enforce the prohibition of unfair practices in private employment. The legislature declared as a civil right the "opportunity to obtain employment without discrimination because of race, creed, color or national origin." It went further, however, than the many previous civil rights statutes, most of which provide that a person who believes his legal rights have been violated may sue the violator for damages. The New York State Law Against Discrimination applied a new technique. It lodged in a state agency the power both to investigate complaints of violations of the law and to enforce it by conciliation, public hearing, and, these failing, a cease and desist order enforceable in the courts. Thus it made fair employment practices a concern of the entire community, not merely a relatively private affair between the discriminator and his victim.

Jurisdictions

As the United States Congress repeatedly failed to enact a federal fair employment practices law, other states and cities followed the example of New York. New Jersey did so later in 1945, Massachusetts in 1946, and Connecticut in 1947. In 1949 Washington, Rhode Island, Oregon, and New Mexico enacted similar statutes. Meanwhile several cities outlawed discrimination in private employment: Chicago in 1945, Minneapolis in 1947, Philadelphia in 1948; and in 1950, Youngstown, Struthers, and Cleveland, Ohio, and Gary, Indiana. Still other states and cities enacted laws on the subject. Indiana and Wisconsin in 1945 authorized existing agencies to help eliminate private employment discrimination by conferring with workers and employers, but the legislatures granted no enforcement powers to these state agencies. Ordinances prohibiting discrimination in municipal employment and by firms executing city contracts were passed by Milwaukee, Wisconsin, in 1945; Phoenix, Arizona, in 1948; and Richmond, California, in 1949. In 1946 Cincinnati, Ohio, outlawed discrimination in municipal employment.

In summary, the following states and cities have fair employment practices laws which apply modern administrative techniques: New York, New Jersey, Massachusetts, Connecticut, Washington, Rhode Island, Oregon, New Mexico; [1] and Minneapolis, Philadelphia, Youngstown, Struthers, Cleveland, and Gary. (Chicago is omitted because its law has been virtually a dead letter because of doubt as to its constitutionality and the failure to establish an agency to administer it.) This entire area includes about one-quarter of the total population of the United States, about a tenth of the nation's nonwhites, and more than two-thirds of the Jews in this country. In the following discussion we shall be concerned with these eight state laws, but only with the Minnesota and Philadelphia ordinances, since

[1] This article and the accompanying table present no further data on the enforcement of the New Mexico law because several attempts to secure official information failed. From the Anti-Defamation League the writer has obtained information which indicates that, primarily because of the legislature's failure to appropriate money for an enforcing agency, the law has been in virtual suspension.

the other city ordinances were enacted too recently for evaluation. Indeed, the reader should bear in mind that, while fair employment practices legislation has already proved its efficacy in general, it is a relatively new legal technique, still in its early stages of development.

ADMINISTRATIVE TECHNIQUES

The fair employment practices laws which apply modern administrative techniques have essentially the same features. They prohibit discrimination by employers in hiring, firing, compensation, or promotion; by labor unions in membership policies or in relations with employers or with nonunion workers; by employment agencies in classifying or referring employees, or in obtaining information from prospective employees. Individuals who believe themselves to be victims of illegal discrimination may file a complaint with a designated state or city agency, which investigates the matter. If it finds the complaint to be without merit, the government agency dismisses it, but it may nevertheless examine the employer's general employment patterns and seek to eliminate such discrimination as it may find.

If it finds merit in the individual's complaint, the administrative agency seeks to adjust it by conciliation to the satisfaction of both the complainant and the respondent. If it is unable to secure what it considers a satisfactory settlement by conciliation, the agency may hold a hearing of the case. If, after the hearing, the agency finds that the law has been violated, it may order the respondent to cease and desist from the unlawful practice and (in some states) to make amends to the complainant by hiring, reinstating, or upgrading him, or by other affirmative action. This cease and desist order is enforceable in the courts. A respondent may also appeal to the courts to review an order by the administrative agency.

The work of the enforcement agencies is not limited to the handling of individual complaints of discrimination. As the accompanying table shows, all the agencies except Oregon's may either themselves initiate proceedings or handle complaints brought by some other state agency. In addition to this type of case, the fair employment practices agencies prohibit questions on job application forms which call for information that may be used to discriminate on the basis of race, color, creed, or national origin. They also conduct educational programs as an important part of their duties under the law, and have succeeded in reducing or eliminating discriminatory employment advertisements in the newspapers.

RESULTS

A study of the operation of these laws quickly reveals that they have justified the community's and the legislature's faith in their efficacy. The administrative agencies have proceeded cautiously and have made definite, if moderate, progress in carrying out the intent of the law. The two predictions most often made about the results of fair employment practices legislation have not come true. First, there has been no deluge of complaints by "cranks" and "disgruntled failures." Second, business has not fled those states and cities which have strong fair employment practices laws.

As was to be expected, the agencies charged with the responsibility of enforcing this new and challenging kind of law have wanted to move carefully and to build up voluntary support for fair employment, rather than resort immediately to the compulsory and punitive features of the law. They have therefore stressed the educational rather than the coercive aspects of the law, and the conciliation process rather than the public hearing and cease and desist

order. The agencies are proud of the fact that they have found it unnecessary (or have seldom had) to go beyond the stage of informal conciliation in achieving settlements of cases in which they discovered actual discrimination. At this writing (March 1951), only the New York and Connecticut commissions have gone so far as to hold a public hearing and to issue a cease and desist order, both in 1950.

Such a record of apparently successful conciliation is impressive; but the public is unable to form a reliable judgment as to the accomplishments of informal conciliation, because none of the enforcing agencies reveals the terms upon which its cases have been settled. Some of the agencies have provided illustrations of such settlements, but none as yet gives complete and systematic reports on the number of complainants who have actually been offered (and have accepted) employment, the number of cases in which back pay has been awarded, and so on. In other words, it is impossible for the public to judge the enforcing agencies' standards in attempting to eliminate discrimination in employment. In this connection it must be mentioned that in 1950 the Connecticut Inter-racial Commission announced that in every case of unlawful refusal to employ an applicant, the only satisfactory adjustment would be an outright offer of a job.

PROBLEMS OF EVALUATION

There are other barriers to systematic evaluation of the fair employment practices laws. How, for example, can we separate their effects from those of the period of full employment during the last decade and the federal wartime Committee on Fair Employment Practice? The number of complaints brought to the enforcing agencies, smaller than expected, is not an adequate guide, since not all victims of discrimination know of the law or are willing to invoke it. On the other hand, one individual's complaint may lead to a fundamental change in a large firm's employment patterns and therefore affect thousands of other workers in the same firm or industry. The best criterion for the effectiveness of these new antidiscrimination laws would be, first, the number of persons who secured employment with employers or in industries from which they had been barred; and, second, the number of companies, types of employment, and industries (with the number of jobs encompassed) from which minorities had earlier been excluded but which were opened to them by the action of the enforcing agencies.

In the face of these inherent difficulties in evaluating the laws and their administration, the enforcing agencies have unfortunately not done all they might to facilitate evaluation. We have already seen that they do not reveal the terms upon which they settle cases of discrimination by informal conciliation. Nor do most of them reveal enough about their work to enable the public to learn what proportion of individual complaints is upheld. Only the New York State Commission Against Discrimination has regularly published data which enable one to compute this proportion. Thus, to the end of 1950, this commission upheld only about 28 per cent of the individual complaints filed with it (although in another 26 per cent of these complaints it found and eliminated other discriminatory practices than those which occasioned the specific complaint). It would be interesting to compare this record with that of other enforcing agencies, but no other agency presents the data to make such a comparison possible, except the Philadelphia FEPC, which presented such data for 1950.

Still another deficiency in the reporting system of the various enforcing

agencies is the lack of uniformity. This problem was discussed two years ago at a conference of the New York, New Jersey, Massachusetts, and Connecticut agencies, and a committee was directed to study it. However, uniformity of complaint and disposition categories and of statistical reports has not yet been achieved.

One reason for these deficiencies of reporting, research, and self-analysis is, of course, the limitations of budget. As the accompanying table shows, New York appropriates about $350,000 annually for its enforcing agency, but each of the other states appropriates less than $65,000. The Philadelphia Fair Employment Practice Commission had a budget of about $75,000 in 1950, but it was far from able to apply much of this amount to reporting and research, when, as it reported last year:

> No privacy exists for the conduct of the Commission's business by the staff. Interviews with complainants and respondents must be carried on in a public room within the hearing of stenographers and clerks and in close proximity to other members of the public awaiting interviews with the staff.

PREJUDICE AND DISCRIMINATION

Whatever the reason for this situation, it undoubtedly blocks adequate appreciation of the full effects of fair employment practices legislation. It is clear that the statutes we have been discussing have actually reduced discriminatory employment practices. The accompanying table shows that the agencies of seven states and two cities have handled about 5,000 cases of alleged discrimination, and that of those they have actually settled, more than half have resulted in the elimination of some form of discrimination.

It is not enough, however, to be able to compute such data. The fair employment practices laws deal ostensibly with *behavior*, but they certainly affect (as they were intended to) *attitudes* and *opinions* as well. To what extent, we may ask, have the statutes thus far established the sort of social situations in which prejudicial attitudes (as distinguished from discriminatory *acts*) become weaker or less prevalent? What is the reaction of employers and workers to their experience with the law and the enforcing agencies?

The answers to such questions would be not merely academically interesting, but also significant for an evaluation of the laws as written and for the state of group relations in a community. We need studies of the attitudes towards minority groups which prevail among workers before and after the liberalization of employment patterns in various kinds of work situations in offices and factories. The records of the enforcing agencies are a treasure of such vital information which their staffs, as now constituted, are not equipped to tap. In order to enable private persons or agencies to interpret the records, the enforcing agencies will have to make public much more material than they have thus far done. They can do so within the limitations imposed by the laws.

CHALLENGES IN THE COURTS

As observed earlier, the enforcing agencies have proceeded cautiously, trying, in conformity with the spirit of the statutes they administer, to settle complaints by persuasion and conciliation rather than by the issuance of cease and desist orders which are enforceable in the courts, or which may be challenged there. Thus far, only the New York and Connecticut agencies have found it necessary to issue such orders. The New York order was accepted by the respondent, an employment agency. The Connecticut order, however, was challenged in the courts.

The Connecticut Inter-racial Commission, in March 1950, ordered a New

SELECTED ASPECTS OF OPERATION OF SEVEN STATE AND TWO MUNICIPAL FAIR EMPLOYMENT PRACTICES STATUTES

	N. Y.	N. J.	Mass.	Conn.	Washington State	R. I.	Oregon	Minneapolis	Phila.
Effective date	July 1, 1945	Apr. 16, 1945	Aug. 21, 1946	May 14, 1947	June 18, 1949	July 1, 1949	July 16, 1949	Feb. 5, 1947	Mar. 12, 1948
Annual budget[a]	$357,000	$65,000	$59,000	$58,000	$25,000	$40,000	$15,000	$8,300	$75,000
Administrative agency	5-member State Commission Against Discrimination	Division Against Discrimination, in Department of Education, and 7-member Commission on Civil Rights	3-member Commission Against Discrimination	10-member Inter-racial Commission	5-member State Board Against Discrimination in Employment	5-member Commission for Fair Employment Practices	Fair Employment Practices Division, Bureau of Labor	5-member Fair Employment Practice Commission	5-member Fair Employment Practice Commission
Remuneration[b]	Full	None	Partial	Per diem	Per diem	Partial	—	None	Per diem
Full-time staff members[c]	63	12	9	14	2	4	2	2	12
Jurisdictions in addition to employment	None	Public accommodations; Education	Public accommodations; Public housing	Public accommodations; Public housing	None	None	None	None	None
Who may initiate complaints	Aggrieved person,[d] Commission, Att'y Gen., civic organization[e]	Aggrieved person, Commissioner of Labor, Att'y Gen.	Aggrieved person, Commission, Employer, Att'y Gen.	Aggrieved person, Commission, Employer	Aggrieved person, State Board, Employer	Aggrieved person, Commission, civic organization	Aggrieved person, Employer	Aggrieved person, Commission	Aggrieved person, Commission, civic organization
Total number of cases docketed[f]	2,448	974	751	177	64	7[g]	21	122	446
	Dec. 31, 1950	Dec. 31, 1950	Nov. 30, 1950	Sept. 15, 1950	Oct. 26, 1950	Dec. 31, 1949	July 1950	June 30, 1950	May 31, 1950
Proportion of settled cases[h] in which									
Discrimination was found[i]	54%	52%	65%	60%	25%	[j]	6[k]	55%	71%[l]
Discrimination was *not* found	46%	48%	35%	40%	75%	[j]	1[k]	45%	29%[l]
Proportion of complaints filed against									
Employers	81%	[j]	64%	87%	53%	[j]	16[k]	78%	57%[l]
Employment agencies	8%	[j]	8%	5%	18%	[j]	0	6%	13%[l]
Labor organizations	9%	[j]	3%	8%	16%	[j]	5[k]	2%	13%[l]
Others	2%	[j]	25%[m]	—	14%[n]	[j]	—	14%[n]	34%[l n]
Proportion of complaints based on charge of discrimination because of									
Race or color	70%	[j]	72%	96%	98%[o]	[j]	19[k]	75%	57%
Religion	16%	[j]	16%	3%	2%[p]	[j]	2[k]	24%	7%
National origin, ancestry	6%	[j]	12%	1%	—	[j]	—	1%[q]	4%
Other reasons	8%	[j]	—	—	—	[j]	—	—	32%[r]

[a] Rounded figures, for fiscal year ending various dates in 1950.

[b] This indicates roughly the proportion of their time which members can afford to devote to this activity.

[c] 1950, including clerical workers.

[d] Includes employment agencies receiving a discriminatory order.

[e] Only under Sec. 131.3 and 131.5 of the statute.

[f] From effective date of the statute until date given below the figure for each agency.

[g] Number of cases filed which investigation showed had some basis for charge of discrimination.

[h] Omitting cases pending, withdrawn, and over which administrative agency had no jurisdiction. For New York and Washington these cases refer only to verified complaints by individuals.

[i] Includes discrimination as charged in complaint or other discriminatory acts discovered.

[j] Insufficient data made public.

[k] Absolute number, not a proportion, because of small number of cases.

[l] For period ending May 31, 1949, since no comparable data made public since then.

[m] No breakdown of this category given.

[n] Mainly state, city, and county government agencies.

[o] 50 out of 51 "formal complaints."

[p] One out of 51 "formal complaints."

[q] One out of 122 cases.

[r] All but two of these cases dealt with discriminatory application forms and advertisements.

Sources: Official reports issued by state and municipal administrative agencies, and special correspondence with them.

Haven dairy to hire a Negro to whom, the commission held, the company had refused employment in 1949 solely because of his race. The company challenged this order, without attacking the validity of the law itself, on three grounds: (1) the law did not empower the commission to order an employer to hire someone against whom he had discriminated; (2) the commission had neglected to name the Negro complainant a party to the case; (3) the commission's ruling that there was discrimination was erroneous.

The Superior Court of New Haven County, in October 1950, fully upheld the commission on points (2) and (3). The court ruled that a complainant need not be a party to a case, and that the commission's finding of discrimination was proper and not arbitrary. With regard to the main part of the challenge, that the law did not empower the commission to order an employer to hire someone against whom he had discriminated, the court upheld the commission but pointed to a weakness in the Connecticut law. That law empowers the Inter-racial Commission, when a tribunal (composed of three of its members) finds discrimination after a formal hearing to order the respondent "to cease and desist from such unfair employment practice." The dairy company argued that the commission could not order it to take the *affirmative action* of hiring the rejected applicant; the commission, the company claimed, could order it only to "cease and desist" from discriminating *in the future.*

The court held that the commission could not order the company to *hire* the rejected applicant so long after the discriminatory act occurred, but it could order the company "to cease and desist from refusing, because of his race, to employ him," if he should "present himself for employment." Recognizing that this decision favors the discriminator who goes to court and thereby sets up a new situation both for himself and for the person against whom he discriminates, the commission has asked the legislature to amend the law by empowering it to take such affirmative action as it believes will effectuate the purposes of the law. Meanwhile, the commission has established as a minimum requirement that no case of unfair refusal to hire shall be settled by informal conciliation unless the employer makes a flat offer to hire the complainant.

The New York law has likewise been challenged in the courts. Here, too, the validity of the law itself was not questioned, but the enforcing agency was said to have exceeded its authority by issuing a regulation requiring employers and employment agencies to post a notice summarizing the antidiscrimination law, and by issuing rules prohibiting certain pre-employment inquiries, answers to which might be used for discriminatory purposes. At this writing, the court has not yet issued its decision.

There has been one other court challenge, this one of an unusual nature, involving the Philadelphia FEPC. A worker, claiming she had been discharged because she was *not* Jewish but German, demanded that the court require the commission, which had found her claim to be without merit, to hold a hearing of her case. This the court, in November 1950, refused to do, holding that the FEPC could not be required to go to the stage of a hearing unless it wanted to apply the law's sanctions. The commission, as an agency with discretionary power, could not be forced to exercise powers it chose not to exercise.

SUMMARY

This review of the fair employment practices laws of eight states and two cities has shown that these laws have un-

doubtedly reduced discriminatory practices, but that an evaluation of their more profound effects is as yet not possible because they have been in effect for only a few years and because the enforcing agencies do not make public as much information as they are permitted to by law. The courts have thus far upheld the powers and the conduct of the enforcing agencies. Administration of the law has been cautious and slow-moving, but the enforcing agencies *have* moved ahead in their work. Two years ago, the General Counsel of the New York State Commission Against Discrimination, speaking of publicity in complaint cases, told the representatives of four state enforcing agencies that their policy in this respect was "premised on fears." He added, and his remark is applicable to the enforcing agencies' policies in general, that "wherever policy has been liberalized, there have been no [unfavorable] repercussions."

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Orientation for Consultants hired by DFEH (from Sharon Longeway

I. INTRODUCTION TO DFEH AND FEHC

A. Historical Outline of the Fair Employment and Housing Act:

"This session of the Legislature has not distinguished itself by any concern for civil liberties," lamented the Los Angeles Daily News in an early 1950's editorial.

The newspaper was voicing the widespread frustration that followed one of a long series of unsuccessful attempts by civil rights leaders to guide a fair employment bill through the legislative labyrinth. It could well have been an observation made at every legislative session from 1945 until 1959. It took that long, 14 years of struggle, to place in the California statute books a simple guarantee of equality in seeking and holding employment. The battle was bitter, but was distinguished by the efforts of dedicated, determined men and women who had a vision which they refused to relinquish.

The Beginnings 1945-53

Fair employment law goes back to President Franklin D. Roosevelt's Executive Order 8802 issued in 1941. The Executive Order resulted from labor leader A. Phillip Randolph's warning that 100,000 African-American workers were prepared to march on Washington to protest job discrimination. The President's order established a commission (with limited power) to handle employment discrimination complaints based on "race, creed, color or national origin."

That Commission died in 1945. In that same year, as the result of the continued concerns of the National March on Washington Movement, fair employment practice legislation was introduced in California, New York, Pennsylvania, Massachusetts and New Jersey. All adopted laws except California, where a measure by Assembly Member Augustus Hawkins was rejected.

The next few years were unproductive in legislating fair employment practices in California. An initiative, Proposition 11, which would have established a Fair Employment Practices (FEP) law, was placed on the 1946 ballot. It was defeated. That defeat was used by some State legislators as an excuse not to support equal rights employment bills in the Legislature.

A "March On Sacramento"

Another bill introduced by Hawkins failed in 1949. In 1951 an FEP bill received only three committee votes. Civil rights leaders were then called together by C. L. Dellums, one of the leaders of the "March on Washington" (and later to serve as California Fair Employment Practices Commissioner and as Chair of the Commission), Franklin Williams, and Terea Hall Pittman. A coalition of labor, community groups, religious leaders, minority leaders and others was formed and called the "California Committee on Fair Employment Practices." They mobilized a "March on Sacramento" in March of 1953

1953. It was meant to demonstrate to Governor Earl Warren and legislators that fair employment law had the backing of a broad spectrum of responsible statewide leaders. AB 900, co-authored by Assembly Member Hawkins from Los Angeles and W. Byron Rumford of Berkeley, was then before the Legislature.

In an editorial on the mobilization, the Los Angeles Daily News stated: "Hundreds of distinguished Californians, representing many religious faiths and both political parties, as well as many civic and labor groups, met last Sunday and Monday in Sacramento to point up the need for FEP legislation."

Despite growing support, including an endorsement of fair employment legislation by the Republican State Central Committee, the Legislature failed to respond. In April of 1953, according to one observer, the Assembly Committee on Governmental Efficiency and Economy, "after three hours of angry debate which lasted through the dinner hour," rejected AB 900 by a 7 to 6 vote.

A Change

But 1953 did mark a change -- in mood, in hope, in the organization of the FEP forces. A poll showed that 61 percent of the public favored fair employment practices legislation. In those days the Legislature met in alternate years, so the next opportunity for the Cal Committee, as it had come to be called, was in 1955 when Assembly Member Byron Rumford introduced AB 971.

In seeking support for AB 971, the Cal Committee pointed to a 1955 Los Angeles Urban League study which showed that of 238 bank branches in the city, only four (in African-American areas) employed African-Americans in other than custodial jobs. The study also showed that no African-Americans had customer contact jobs in Los Angeles department stores, nor were any employed as waiters or waitresses in Class A hotels. Only one major oil company employed African-Americans above the custodial level.

AB 971 did garner important support. But it also attracted strong opposition. Opponents testified that the "need for FEP is greatly exaggerated," and that a fair employment commission would be "the policeman with the club." C. L. Dellums, Cal Committee Chairman, reminded the Legislature that FEP was "not a monster" and that it would only "establish a floor of decency on which workers may stand together...as good citizens."

The shift begun in 1953 continued in 1955 with strong bi-partisan support. In 1955, for the first time, an FEP bill was passed by a house of the Legislature. AB 971 was passed by the Assembly, with a vote of 48-27. The bill failed to pass the Senate Labor Committee.

"Un-American and Undesirable"

In 1957 the Cal Committee supported AB 2000, introduced by Augustus Hawkins. With each session, support was growing. Responding to

1957

charges that "you cannot legislate morality," one San Francisco newspaper wrote: "We can no longer give comfort to those who perpetrate the old fallacy that law has no effect on human relations." In one well-organized showing of support, labor groups in both Northern and Southern California circulated a petition for citizen signatures, calling on Governor Goodwin Knight and members of the Assembly and Senate to pass FEP laws.

Again in 1957, legislation which passed the Assembly was quashed by the Senate, but that did not end the struggle. A Senate bill dealing with child labor had passed the Senate and was before the Assembly. Assembly Member Hawkins seized the opportunity to amend it, adding the provisions of his defeated FEP bill. Because of the amendment, the Senate had to review the bill again, and killed it rather than accept the amendments.

The 1959 Law

1959

Authored by Assembly Member Rumford and co-sponsored by Assembly Member Augustus Hawkins and 52 other Assembly Members, AB 91 was introduced early in the 1959 session. It passed the Assembly with a 64-14 vote. In the Senate, AB 91 was subjected to long and bitter committee battles, and hit with a barrage of amendments designed to weaken or cripple it. Finally, compromises were reached to make AB 91 palatable to all parties, and the amended bill was sent to the Senate floor by a committee vote of 5-2.

The Senate passed AB 91, 30-5. It was a victory for the Cal Committee and for a small band of dedicated legislators. The battle, which had begun 18 years earlier with President Roosevelt's Fair Employment Practices Executive Order, culminated in Governor Edmund G. "Pat" Brown signing the bill on April 15, 1959. The statute was expressly set to take effect on September 18 as part of the California Labor Code.

AB 91 established a five-member commission, to be appointed by the Governor, and a governmental administrative agency, the Division of Fair Employment Practices, housed in the Department of Industrial Relations, to carry out the policies and dictates of the commission.

Governor Brown appointed John Anson Ford, a respected Los Angeles County Supervisor, as the Commission's first chair. Defining the aims of the Fair Employment Practices Commission (FEPC) to employers, Chair Ford said: "The several minority groups within our State have within them latent capacities that can and will contribute much to our national strength and vitality, when not circumscribed or suppressed. Suppressed or restricted in their rights to fair employment on a merit basis they can become a detriment to us all. This then is the broad principle giving background to the Fair Employment Practices Act."

The First Year

The law in 1959, reflecting the language of President Roosevelt's Executive Order of 1941, prohibited job discrimination based on "race, religious creed, color, national origin or ancestry." Amendments were to come which would vastly broaden the extent of the law. Changes in the structure of the Division and of the Commission would later alter enforcement administration. First there came the battle for a fair housing law, also sponsored by the Cal Committee.

Housing Discrimination

Even prior to California's first FEP law, progress had been made in the housing area, particularly where housing was publicly financed. Broader protections were sought in a bill introduced by Assembly Member Augustus Hawkins during the 1961 legislative session. Like the early versions of the fair employment bill, the measure had no success in legislative committees.

In 1963, AB 1240 was introduced by Assembly Member Byron Rumford. For five months it was amended, debated, and studied. In the final weeks of the session, members of civil rights groups maintained a round-the-clock vigil in the Capitol rotunda. Only minutes before the session ended, the bill was passed by a 23-13 vote in the Senate and a 63-9 vote in the Assembly, and was signed into law by Governor Brown. Known as the Rumford Act, the statute prohibited discrimination because of race, color, creed, national origin or ancestry in housing accommodations of three or more units, in public and redevelopment housing, and in owner-occupied single family homes with public financing. Additionally, the activities of real estate brokers and salesmen and mortgage lenders were covered.

From the beginning, the new Rumford Act faced heavy opposition. Opponents managed to obtain enough signatures in an initiative (Proposition 14) on the November 1964 ballot to void major portions of the Rumford Act. The law still prohibited discrimination by realty brokerage offices, lending institutions and State or local units of government involved in housing. Authority remained for the FEPC to engage in certain educational and affirmative activities. Proposition 14 amended the State Constitution to prevent enactment of any law limiting an individual's absolute right to sell or lease his or her property except by constitutional amendment.

The repeal did not stand. In May 1966, the California Supreme Court held that the amendment to the Constitution brought about by Proposition 14 was itself contrary to the U.S. Constitution. The court found that the amendment conflicted with the equal protection clause of the federal Constitution and "significantly involved" the State in private acts of discrimination. The Rumford Act was returned to its original full force and effect, subsequently to be amended and broadened to its present status.

The First 20 Years

Provisions in the 1959 law enabled the FEPC, besides pursuing resolutions of individual complaints of employment discrimination, to undertake broader investigations. The Commission set out to do so within its limited authority. Much of the Commission's work was educational, attempting to show that the principle of fair employment practices was, in Governor Edmund G. Brown's words, not only "morally right", but "completely workable."

As that effort went forward, a changing civil rights climate brought pressure to bear upon the Legislature to expand the coverage of the Fair Employment Practices Act to include other protected classes. To the original prohibitions in the 1959 law, the following amendments were enabled:

1970 - prohibition of job discrimination based on sex.

1973 - prohibition of job discrimination based on age, years 40-64.

1974 - prohibition of job discrimination based on physical handicap.

1975 - prohibition of job discrimination based on medical condition (cancer).

1976 - prohibition of job discrimination based on marital status.

1977 - prohibition of mandatory retirement at age 65, and elimination of the upper age limit (70) in definition of age discrimination.

In the 1970's, the Fair Housing Act and the Unruh Act were also amended to extend coverage and remedies, and to reduce exemptions. In employment, legislation gave the Commission the added responsibilities of contract compliance for construction contracts.

The Modern Agency 1977-1989

Statutory changes made in 1977, 1978 and 1980 brought about the structure now in existence for the enforcement of California's antidiscrimination laws.

1977 (effective 1978):

- The Commission was separated from the Division of Fair Employment Practices and assigned role as a quasi-judicial, regulatory and educational body. The Division was to investigate, conciliate, and prosecute discrimination cases.

- The Chief of the Division was given power to initiate complaints.

- The law was expanded to provide for class actions.

- The requirement that accusations of discrimination be issued within one year of complaint filing was established.

- For the first time an individual's right to pursue a remedy in court under the Act was formalized.

- Discovery powers were expanded (subpoenas and interrogatories) and codified.

- Authority to seek temporary restraining orders was established.

- The Commission was given authority to declare selected decisions as precedential (i.e., binding in future cases unless overruled).

1978 (effective 1979):

- Attorney's fees to a prevailing party were made available in private lawsuits.

- Pregnancy discrimination and leave provisions were established.

- The agency was given the authority to monitor applications and examinations of the various Licensing Boards within the Department of Consumer Affairs.

- The agency was given responsibility for regulation of antidiscrimination programs required of firms providing goods and services to the State.

1980 (effective March 1, 1980):

- The Fair Employment Practices Act was combined with the Rumford Fair Housing Act into a single Fair Employment and Housing Act.

- The Division of Fair Employment Practices was removed from the Department of Industrial Relations and was established independently as the Department of Fair Employment and Housing (DFEH).

- Fair Employment Practices Commission became the Fair Employment and Housing Commission.

With the exception of an expanded jurisdiction in the area of employment harassment, the statute's provisions have remained largely unchanged since 1980. Society, however, has changed. Contrast the nature of employment discrimination complaints filed under each major basis between 1979 and the 1987-88 Fiscal Year.

	1979	1987-88
Race and color	42%	22%*
Sex	26%	49%
National Origin-Ancestry	15%	13%
Age	10%	16%
Physical Handicap	5%	15%
Religion	2%	2%
Medical Condition	Neg	1%
Marital Status	Neg	2%

*20% of these complaints are filed under more than one basis.

In 1960, the Commission's first year of existence, 411 employment discrimination charges were filed. In 1979, less than twenty years later, almost 8,000 employment discrimination cases were filed, a twenty-fold increase over 1960. In the 1987-88 Fiscal Year, 8,322 employment discrimination cases were accepted.

Growth of filings

The Civil Code: Unruh and Ralph Civil Rights Acts

Since 1978, by reference in the Fair Employment and Housing Act, DFEH has become an avenue for the enforcement of the Unruh Civil Rights Act (Civil Code Section 51) and the Ralph Civil Rights Act (Civil Code Section 51.7). The authority to enforce these essential antidiscrimination statutes, combined with the responsibility for enforcing the specific employment and housing discrimination prohibitions of the Fair Employment and Housing Act, give the Department and the Commission one of the broadest enforcement mandates in the country.

- Unruh Civil Rights Act

  The Unruh Civil Rights Act prohibits discrimination in the provision of goods or services by all business establishments, including housing providers. It has been interpreted as prohibiting discrimination on any arbitrary basis. Under the Unruh Act the Department accepts housing discrimination complaints based on physical disability, age, and sexual orientation, bases which are not included in the more specific housing discrimination provisions of the Fair Employment and Housing Act.

- Ralph Civil Rights Act

  The Ralph Act provides civil remedies, including damages and restraining orders, for persons who have had acts or threats of violence perpetrated against them on a discriminatory basis.

1993 (extensive amendments became effective January 1, 1993)

- Housing Discrimination

  Senate Bill 1234 (Calderon) - Signed July 13, 1992. A complete overhaul of California's housing discrimination laws. It added to the FEHA protections against discrimination based on disability and familial status, provided for unlimited actual damages and substantial civil penalties, and allows either of the parties to a complaint, in which DFEH has concluded that the law has been violated, to remove the issue from the administrative process to a court of law. If the issues are removed to court, DFEH will represent the victim.

- Employment Discrimination

  Assembly Bill 311 (Moore) - Empowers the FEHC to award victims of employment discrimination compensatory damages for emotional distress and to order administrative fines against employers for egregious violations of the FEHA. The combined total of compensatory damages and administrative fines may not exceed $50,000.

  Assembly Bill 1077 (Bronzan) - Among other changes designed to conform California law to the federal Americans With Disabilities Act (ADA), added to the FEHA protections against employment discrimination based on mental disability and changed the term "physical handicap" to "physical disability." The bill also codified certain concepts previously contained in regulations such as "reasonable accommodation," "undue hardship" and "essential duties."

  Assembly Bill 1286 (Vasconcellos) - Clarified the definition of "physical disability" in the FEHA to include "immunological" disorders. This codifies the longstanding position that the FEHA encompasses a prohibition against employment discrimination based on AIDS or on a HIV positive diagnosis.

  Assembly Bill 2264 (Speier) - Requires employers to post information made available by DFEH regarding sexual harassment, and to provide every employee information on sexual harassment in the form of a leaflet designed by DFEH.

  Assembly Bill 2865 (Speier) - Extended to employers of 15 or more persons the requirement currently expected of employers of from 5 to 14 employees to temporarily transfer a pregnant employee to a less hazardous or strenuous job. The transfer is only necessary if made at the recommendation of the employee's doctor and if it can be reasonably accommodated.

- Public Accommodation

  Assembly Bill 1077 (Bronzan) - As well as amending the FEHA and numerous other laws relating to the rights of the disabled, AB

1077 amended the Unruh Civil Rights Act (Civil Code Section 51) to provide that a violation of the Americans With Disabilities Act is a violation of the Unruh Civil Rights Act.

The Unruh Act requires equal access to the accommodations, advantages, facilities, privileges, or services of all business establishments.

- Hate Violence

Assembly Bill 311 (Moore) - As well as providing enhanced remedies for victims of employment discrimination, AB 311 provided remedies for victims of hate violence. It provided the FEHC authority to order civil penalties of up to $25,000 and compensatory (emotional distress) damages of up to $150,000.

Assembly Bill 3407 (Klehs) - Required local law enforcement agencies to distribute a DFEH brochure on hate violence to victims of such crimes. It also required the State Commission on Peace Officers Standards and Training (POST) to train local law enforcement officials on hate crime issues.

- Enforcement Procedures for the FEHA

Assembly Bill 2392 (Moore) - Gave the FEHC the option of appointing its own hearing officers to hear accusations of discrimination prosecuted by the DFEH rather than restricting it to using the Administrative Law Judges of the State Office of Administrative Hearings.

B. Overview of DFEH Complaint Process:

The DFEH is a civil law enforcement agency. In that capacity, the Enforcement Division investigates, and if necessary, prosecutes complaints that are brought to its attention. All complaints (employment, housing, public accommodations, etc.) may potentially go through six stages, Intake, Pre-Determination, Determination, Conciliation Conference, Public Hearing or Lawsuit and Court Appeal. Most complaints are resolved at the first three stages, less than one percent reach the fifth or sixth stages.

SIX STAGES:

1. Stage One

Intake: The primary purpose of intake is to determine if the complainant has sufficient information to initiate a formal complaint. At this stage, the following must occur:

a. Make a jurisdictional determination, i.e., timely complaint, proper respondent, etc.;

b. Prepare the necessary paper work (draft complaint, EDP forms, case notes, etc.) in order to assist in the preparation of the case file; and

c. If the matter concerns a housing complaint, to make an informal (prior to formal filing) complaint settlement attempt.

2. Stage Two

Pre-Determination: Following complaint filing, service and assignment to a particular consultant the following occurs:

a. Pre-Determination settlement;

b. Case Log entry made;

c. If an answer to the complaint is not received within 21 days, a call is made to the respondent's representative to find out why not. Between two weeks to one month from the filing date, a settlement attempt is to be made whether or not an answer is in file;

d. If the settlement attempt is successful, the complaint is processed as a "16" closure;

e. If no answer is received by the 30th day from filing, a follow-up service letter (DFEH 200-07) is sent; and

f. If no answer is received by the 60th day, or sooner if deem appropriate, from the filing date, a subpoena duces tecum and/or a set of interrogatories is issued to compel an answer.

3. Stage Three

Determination: Once an answer to the complaint is in the file, the following takes place:

a. An Investigative Worksheet (DFEH-400-08) is completed.

b. The respondent's answer is analyzed for sufficiency, and further informational requests are made if needed.

c. The complainant is contacted for possible rebuttal or submission of further data.

d. On-site visit is made where necessary to ensure that material pieces of evidence (statements, alleged documents not submitted, etc.) are verified and to observe or secure other relevant evidence, as follows:

1) Interview witnesses,

2) Review original documents,

3) Review prior unavailable documents, and

4) Consult respondent regarding EEO laws.

e. Post-Determination Settlement attempt where cause is found.

f. Investigative report is written once a merit determination (either for "cause" or "no cause") has been made. The following takes place:

1) An investigative report draft is submitted to the District Administrator for approval,

2) Once approved, the report is submitted by the District Administrator as a recommendation for closure or prosecution to our Legal staff, and

3) If recommended for prosecution, further investigation may be necessary.

4. Stage Four

Conciliation Conference: This is where the cause investigative report has been approved by the District Administrator, the following occurs:

a. The District Administrator will chair the conference to negotiate a settlement; or

b. Based on the evidence reviewed at the Conciliation Conference, the District Administrator will decide whether to direct the case be closed or recommend to Legal that an accusation be issued.

5. Stage Five

a. Public Hearing: At this stage a merit determination has been agreed to by the District Administrator and Legal Counsel and because respondent has refused to settle informally, an accusation to public hearing is issued. The following are some typical events:

1) Post accusation settlement attempt by assigned Legal Counsel,

2) Case preparation for public hearing by Legal Counsel with consultant and District Administrator assistance, and

3) Prosecution at public hearing.

b. Lawsuit

The charged respondent in both employment and housing cases may elect to be prosecuted in court, rather than have the issues heard by the Fair Employment and Housing Commission. If the respondent makes that election, the Department will file a lawsuit.

In housing cases the complainant also has the option of electing a lawsuit as an alternative to the administrative hearing.

6. Stage Six

Court Appeal: This stage covers the point from the issuance of an order by the Fair Employment and Housing Commission to the final court appeal, if any, to that order. All matters therein will be handled by the Legal staff.

C. Current Mission of DFEH and FEHC:

1. The Mission of the Department of Fair Employment and Housing

To promote and enforce the rights of the people of California to be free from discrimination in employment, housing, public accommodations and from hate violence, as mandated by the Fair Employment and Housing Act.

2. The Mission of the Fair Employment and Housing Commission

To ameliorate social tensions and guarantee equal opportunity in employment, housing and public accommodations by preventing and eliminating discrimination based on the Fair Employment and Housing Act's protected classes.

D. Organizational Scheme of DFEH:

1. Overall Organization - DFEH is organized into four major subdivisions, the Office of the Director, the Enforcement Division, the Administrative Services Division, and the Legal Division. DFEH employs approximately 200 persons assigned throughout the State in 12 offices. The chief administrative head is the Director, followed by the Chief Deputy Director. A Deputy Director administers Enforcement and Administrative Services. The Chief Legal Counsel administers the Legal Division, which employs a total of 8 attorneys: the Chief Counsel, a Northern Division (Sacramento based) with 4 staff attorneys and a Southern Division (Los Angeles based) with 3 staff attorneys.

2. Enforcement Division - The largest of the divisions, the Enforcement Division is the investigative branch of DFEH. The Division is managed by a Deputy Director, who manages two subdivisions, and the District Offices.

- District Offices - The District Offices are divided into two regions (North and South) and are supervised by a Northern (Sacramento-based) and Southern (Los Angeles-based) Regional Administrator. Its 13 offices in 11 cities employ approximately 170 people. These units provide direct services to the public and perform the bulk of DFEH enforcement activities by processing complaints of employment, housing and public accommodations discrimination.

  Each District Office is supervised by a District Administrator and staffed with clerical personnel and Fair Employment and Housing Consultants I and II who process complaints. The District Administrator is responsible for managing the office, responding to public inquiries, presiding over formal conciliation conferences and providing local employers and employees with information on their rights and responsibilities under the law.

- Office of Compliance Programs (OCP) - The FEHA prohibits contractors from engaging in unlawful employment discrimination during the performance of a State contract. The Office of Compliance Programs reviews contractor personnel practices and procedures to ensure that equal employment opportunities are provided for all employees and applicants for employment. Contractors who violate nondiscrimination provisions are ineligible to receive future State contracts. This office is staffed with a Compliance Programs Supervisor, two Compliance Officers and two clerks.

  The Employee Assistance Program (EAP) is coordinated by the Supervisor of OCP. This program offers confidential assistance and referral services to employees who are experiencing performance or personal problems.

3. Administrative Services Division - This Division is charged with the administrative functions of DFEH (e.g., budget, business services, EDP, etc.) It is supervised by a Staff Services Manager II.

   - Fiscal Resources Management - This unit provides Business Services, Accounting, Budgets and Contracts, and Fiscal Management Services for DFEH. The unit is responsible for overall fiscal management and budgeting for DFEH. The unit monitors budget expenditure status, prepares reports to control agencies and the Legislature, and interfaces with the State and Consumer Services Agency and Department of Finance. This unit prepares the annual financial plan and implements baseline budget adjustments for operating expenses, salaries, and benefit increases.

o Accounting:

The Accounting Unit is supervised by a Senior Accounting Officer and is supported by two Accountant I's and two Accounting Technicians. Accounting pays the Department's bills; records the expenditures; and produces expenditure, budget, and other reports for management and control agencies. It also has responsibility for the Department's charge cards.

o Business Services:

The Business Services Unit has a staff of three; a Business Services Officer I, a Business Services Assistant, and a clerical position. This unit provides administrative support to the Headquarters office and 11 field offices located throughout the State. Statewide responsibilities include office space acquisition and alterations, communication equipment and service, maintenance contracts, printing and duplicating, procurement, inventory, and mail service. The Business Services Unit is required to file numerous annual or monthly reports to various control agencies.

- Employee Relations and Personnel Management - This unit provides personnel and employee relations services with a staff of five. The major tasks of this unit include training, classification of positions, payroll, health benefits, attendance, examining, hiring, recruiting, transfers, promotions, separations, retirements, bargaining unit contract administration, grievances, merit and non-merit complaints, disciplinary matters, Workers' Compensation claims, Nonindustrial Disability Insurance (NDI) claims, employee recognition programs, position control, and layoffs.

- Data Processing Management

This section provides central data processing services for DFEH by a Staff Programmer Analyst. It is responsible for the proper functioning of all automated systems as well as related data processing equipment at DFEH.

4. Legal Division - The Legal Division maintains two field offices, one in Sacramento and one in Los Angeles, and is managed by a Chief Legal Counsel located in Sacramento.

The Legal staff is responsible for providing legal assistance to Enforcement field operations staff, reviewing field operations cases for accusation worthiness, presenting cases before the hearing offices acting for the Commission, filing and prosecuting lawsuits, preparing briefs and providing legal opinions and analysis of pending legislation and FEHC Regulations.

E. Organizational Scheme of FEHC:

In 1959, the Fair Employment Practices Commission was established as part of the Department of Industrial Relations to develop overall policies implementing the Fair Employment Practices Act. In 1964, the Rumford Fair Housing Act was added to its jurisdiction. In 1980, it became the Fair Employment and Housing Commission, and was established as a separate entity to develop the overall policies for implementing the State's antidiscrimination statutes. It is independent of the Department of Fair Employment and Housing, and acts as a court when hearing cases filed by the Department.

The Commission, which is composed of seven members appointed by the Governor to four-year terms, carries out its statutory mandate through five functions:

1. Adjudicatory Proceedings:

   The Commission decides formal accusations filed by the Department of Fair Employment and Housing, and after a trial before an Administrative Law Judge.

2. Judicial Reviews of Commission Decisions:

   Commission staff assist the Attorney General when Commission decisions are appealed to the superior and appellate courts.

3. Investigation Hearings:

   The Commission conducts fact-finding hearings on selected matters involving illegal discriminatory activity.

4. Regulatory Hearings:

   The Government Code authorizes the Commission to promulgate regulations and standards to implement the State's antidiscrimination statutes.

5. Amicus Curiae Activity:

   The Commission prepares and submits legal briefs in cases involving issues related to the Commission's jurisdiction. The Commission's address and telephone number are:

   Fair Employment and Housing Commission
   1390 Market Street, Suite 410
   San Francisco, CA 94102
   (415) 557-2325

II. INTRODUCTION TO DISTRICT OFFICE

A. Review the respective District Office staff responsibilities via the fully completed Organization of the District Office (Exhibit 7); or

B. As the new consultant is introduced to the District Office staff, have him/her fill out the Organization Chart for their reference.

III. INTRODUCTION TO JOB ASSIGNMENT

A. Review Consultant I Job Duty Statement:

Review the Fair Employment and Housing Consultant I Duty Statement - Position Allocation (Exhibit 8). The instructor will need to review each major job duty, as identified by the percentile ratings on the STATEMENT.

B. Review Consultant I Performance Standards Options:

Review the Allocation Guidelines for FEH Consultant I and II (Exhibit 9). The instructor will need to review each major performance standard for the particular range that applies to the new consultant.

IV. INTRODUCTION TO AND PROCESSING OF MISCELLANEOUS PERSONNEL-RELATED MATTERS

A. Review State and Departmental Incompatible Activities:

Government Have the new consultant read and study a copy of the current Incompatible Activities (Exhibit Ensure that the new hire understands his/her responsibility to abide by it, or suffer possible punitive action.

B. Review DFEH Policies:

1. Incompatible Activities:

Government Code Section 19990 requires each State agency to determine, subject to the approval of the Department of Personnel Administration (DPA), those activities which, for employees of each State agency, are inconsistent, incompatible or in conflict with their duties as State officers or employees.

Exhibit 10 is the current Incompatible Activities Statement for DFEH. DFEH employees are to review the list carefully, acknowledge it and send a copy to the DFEH's personnel office.

2. General Policy Memos:

From time-to-time DFEH will issue policy memos on a statewide level. These memos are to be considered as having a standing effect, until superseded by another policy or rescission. Any question regarding the administration of these policies should be directed to your immediate supervisor.

3. Private/State Vehicle Usage:

Consultants are responsible for adhering to the following regarding vehicle use while on State business.

While driving on State business, consultants:

a. Shall possess a valid driver's license appropriate to the type of vehicle(s) operated. It is each consultant's responsibility to ensure his/her license is renewed on time and valid.

b. Shall attend and successfully complete an approved defensive driver training course at least every four years.

c. Shall use and ensure that all passengers use all available safety equipment in the vehicle being operated. Safety equipment includes seat belts and shoulder harnesses.

The following mileage reimbursement rates are appropriate for employees who are authorized to use a private vehicle on State business:

a. Employees may claim 24¢ per mile even though a State car may be available.

b. Employees may claim 24¢ per mile without certification when a State vehicle is not available.

c. Employees may certify rates in excess of 24¢ when a State vehicle is not available or when the agency has determined that it is more advantageous economically to the State. To claim mileage rates in excess of 24¢ but not to exceed 30¢ per mile, employees must sign the certification statement on the Travel Expense Claim.

d. Employees may claim the appropriate rate as defined in Section 0755 of the SAM because such use is economically advantageous to the State. In determining the economic advantage to State versus private vehicle, a supervisor will include consideration of: the location of the employee's residence, regular workplace, destination, and location and availability of State vehicles as these factors affect employee time and distance traveled.

e. If a State vehicle is not available, employees may use alternate modes of transportation that are in the best interest of the State.

Consultants with questions regarding vehicle use should discuss their questions with their supervisor.

Discuss each policy with a question/answer session to ensure that he/she fully understands their responsibilities under the particular departmental policy memos.

C. Review District Office Policies:

Each District Office is authorized to establish District Office policy and procedure memos that are not inconsistent with departmental policies and procedures. Such memos are only effective within the District Office, and remain in effect until they are superseded by another or are rescinded.

Have the new consultant study copies of memos pertaining to this subject, which the District Administrator will provide. Discuss each memo with a question/answer session to ensure that he/she fully understands their responsibilities under the particular District Office policy memos.

D. Personnel-Related Reporting Requirements:

1. Complete Personnel Paperwork

Have the new consultant report to the Office Technician, or other appropriate staff person, to complete the personnel check-in process. Most of the required forms will be supplied by the Personnel Office at Headquarters.

2. Attendance Report/Travel Claim Orientation

Have the new consultant review and discuss a fully completed mock Absence and Additional Time Worked Report (STD 634) and a Travel Expense Claim (STD 262), which the instructor will draft. The instructions should communicate the need for these forms to be complete (all appropriate blocks filled out), supported as required (doctor's memos, receipts for business expenses, etc.) and legible.

SUMMARY OF THE HISTORICAL OUTLINE
OF
THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

I. In 1959, the California Fair Employment Practices Act (FEPA) was enacted.

II. The FEPA established:

- The Fair Employment Practices Commission (FEPC)
- The Division of Fair Employment Practices (DFEP)
- A prohibition of employment discrimination if based on race, color, national origin, ancestry and religious creed.
- Both entities were placed in the State Department of Industrial Relations.

III. The FEPC was charged with the responsibility of investigating, conciliating and prosecuting cases of alleged prohibited discrimination. The day-to-day case processing activities were transacted by the DFEP since the FEPC, which consisted of seven gubernatorial appointees (Commissioners), only acted on a part-time, non-civil service basis.

IV. Significant legislative enactments are as follows:

- 1963 -- The Rumford Act was added to the FEPA. It supplemented the already existing Unruh Act barring discrimination in business establishments by prohibiting discrimination because of race, color, national origin, ancestry or religion in housing accommodations.
- 1970 -- Sex, was added as a class protected against employment discrimination.
- 1973 -- Age (40 to 64), was added as a class protected against employment discrimination. A latter amendment expanded the class to 40 and above, eliminating the 64-year-old "cap."
- 1974 -- Physical handicap, was added as a class protected against employment discrimination.
- 1975 -- Medical condition (cancer) was added as a class protected against employment discrimination.
- 1976 -- Marital status, was added as a class protected against employment discrimination.
- 1976 -- The Ralph Act, which protects certain classes against violence or the threat of violence was incorporated into the FEPA.
- 1978 -- The DFEP was granted exclusive authority over complaint processing from intake to prosecution before the FEPC. This year

also saw the addition of a specific prohibition against pregnancy discrimination and pregnancy leave provisions, authority in class action and a complainant's right-to-sue in State court.

- 1980 -- The DFEP is elevated to departmental status. It became the Department of Fair Employment and Housing (DFEH), and the FEPC becomes the Fair Employment and Housing Commission (FEHC).

- 1993 - The FEHA is amended to make specific provisions for compensatory damages and administrative fines in employment cases and to conform housing provisions to federal housing law. "Mental and physical disability" was substituted for the term "physical handicap" and respondents were given the option of electing to be sued in court by the Department rather than being subjected to an administrative hearing.

DFEP/DFEH ADMINISTRATIVE HEADS

Edward Howden	1959-65
Peter Johnson	1965-66
Paul Meaney	1966-71
Roger Taylor	1971-72
Charles Wilson	1972-77*
Alice Lytle	1977-79
JoAnne Lewis	1979-83
Mark Guerra	1983-87
Talmadge Jones	1987-89
Dorinda Henderson	1989-91
Nancy Gutierrez	1991-

* Served in acting capacity.

FAIR EMPLOYMENT AND HOUSING COMMISSION

COMMISSIONERS

Original Commission Appointments, 1959

John Anson Ford, Chair
Elton Bombacher
C. L. Dellums
Mrs. Carmen Warschaw
Dwight Zook

PAST CHAIRS

John Anson Ford
Mrs. Carmen Warschaw
Clive Graham
C. L. Dellums
Pier Gherini
John A. Martin, Jr.
Cruz Sandoval

PAST COMMISSIONERS

Paul Bannai
George Bond
Donald Diers
Louis Garcia
Lois Graham
Mark Guerra
Betty Lim Guimares
Thomas Hom
Harvey Horikawa
Michael Johnson
George McGue
Catherine Montgomery
Mauricio Munoz
Charles Poochigian
Anna Ramirez
Henry Rodriguez
Joseph Roos
Stella Sandoval
Milan Smith
Joan Sparks
Audrey Sterling
J. M. Stuchen
Michael Vader
Susan Weiner

CURRENT COMMISSION (June 4, 1993)

Osias Goren, Chair
Lydia Beebe
Warren Jackson
Ronald Lucas
Arthur Madrid
(2 Vacancies)

SCOPE OF LEGAL MANDATES AND WORKSHARING AGREEMENTS

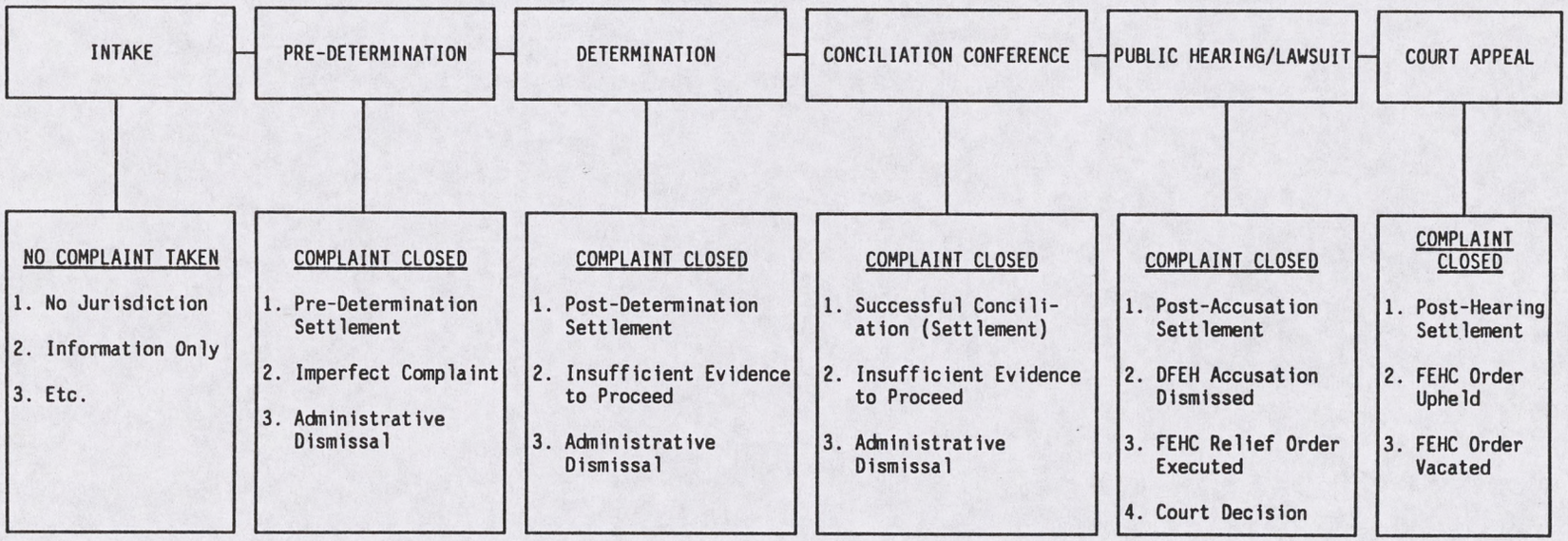
Legal Mandate	Purpose	Departmental Activity	Problem Areas
Fair Employment and Housing Act	Protect the public against discrimination in employment and housing on specified basis, i.e., race, sex, religion, national origin, etc.	Process complaints of discrimination; educate the public on the Act.	Increasing number of complaints. Potential for expansion of jurisdiction due to legislative action or court decisions.
Unruh Act	Protect the public against arbitrary discrimination in public accommodations.	Processes cases. Educate the public on the Act.	
Ralph Act	Violence or threat of violence based on race and religion.	Processes complaints. Provides technical assistance to public agencies. Educate the public.	Local complexities in determining jurisdiction.
Worksharing Agreement	**Purpose**	**Departmental Activity**	**Problem Areas**
EEOC, Title VII, Section 706 Civil Rights Act of 1964	By contractual agreement the Department processes cases of concurrent jurisdiction with EEOC.	Partially reimbursed by federal government to process cases.	None.
HUD, Title VIII, Section 816 Civil Rights Act of 1968	Process housing discrimination cases of concurrent jurisdiction with HUD.	Partially reimbursed by federal government to process cases.	No longer in existence. Seeking statute charges to regain.
DOL/Memorandum of Understanding	Coordinate contract compliance work with the Department of Labor.	Contract compliance monitoring.	None.

BTM

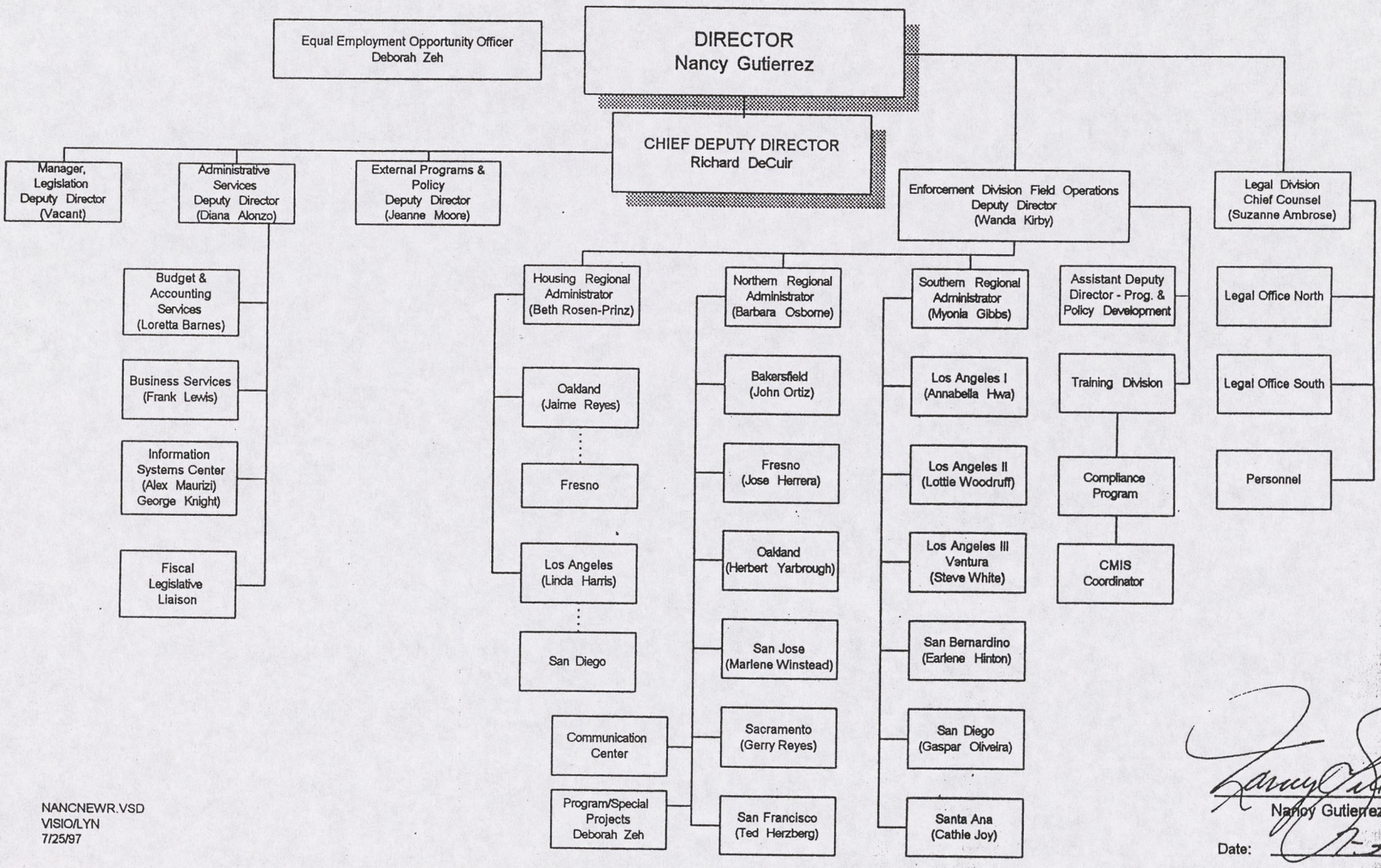
Orientation - EXHIBIT 5

07/01/93

DFEH COMPLAINT PROCESSING FLOW CHART



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
Organization



NANCNEWR.VSD
VISIO/LYN
7/25/97

Nancy Gutierrez

Date: 7-31-97

ORGANIZATION OF THE DISTRICT OFFICE

Each District Office (DO) is administered by a District Administrator (DA), who reports to the particular Regional Administrator (RA) in the Northern or Southern Region. The District Administrator supervises the entire office staff. The Office Services Supervisor in the Los Angeles District Office supervisors the clerical staff. In the other District Offices the Office Technicians (OTs) are considered lead clerk and they lead a clerical unit of Office Assistant under the direct supervision of the District Administrator.

The _____ District Office personnel is as follows:

District Administrator _____

Consultants _____

Office Supervisor/
Office Technician _____

Office Assistants _____

Department of Fair Employment and Housing

DUTY STATEMENT - POSITION ALLOCATION

See Reverse

SIDE 1 - DUTY STATEMENT

PRESENT CLASSIFICATION	NAME Last First Middle Initial	
Fair Employment and Housing Consultant I	(See Attached List)	
FUNCTIONAL TITLE Consultant	DIVISION Enforcement	UNIT All Field Offices
POSITION NUMBER (See attached List)	LOCATION (See attached List)	DATE May 1, 1985

Description of Duties: This is the most important single item on this form. Summarize the regularly assigned duties of your position. Explain the most important duties first. If tasks are cyclic, indicate nature of cycle. List the portion of time by percentage in the left-hand column. Extra sheets may be attached.

PERCENTAGE OF TIME	DUTIES
5/50%	Participate in training designed to develop and maintain skills necessary to serve as a consultant.
30/60%	Investigate complaints of discrimination:
	o Analyze issues
	o Design strategies
	o Prepare formal discovery attempts
	o Interview Witnesses
	o Attempt settlements
10/20%	Prepare written reports of investigations.
20%	Accept new complaints and/or advise and counsel the public on proposed complaints of discrimination:
	o Explain jurisdiction and procedures
	o Draft complaints
	o Interview prospective complainants
	o Properly prepares paperwork
	o Where necessary directly serves a complaint
5%	Maintains records necessary to control and manage caseload, including diarys, logs reports. Confers with supervision on progress.
-%	Prepares for and participates in, efforts at conciliation. May participate in public hearings.

REVIEWED AND APPROVED BY: (Immediate Supervisor) [signature] DATE 5-1-85

Department of Fair Employment and Housing

DUTY STATEMENT - POSITION ALLOCATION

2 - POSITION CLASSIFICATION

Classification of Supervisor

Fair Employment and Housing Consultant III (Supervisor)

DESCRIBE THE SUPERVISION OR GUIDANCE YOU RECEIVE

Works under close supervision. For some functions, may report to the District Administrator

Closeness of supervision will decrease as skills develop.

SUPERVISION EXERCISED

DIRECTLY SUPERVISED		INDIRECTLY SUPERVISED	
NUMBER	CLASS TITLE	NUMBER	CLASS TITLE

DESCRIBE SUPERVISION EXERCISED

DIRECT SUPERVISION	INDIRECT SUPERVISION

REVIEWED AND APPROVED BY (Immediate Supervisor) DATE 5-1-85

ALLOCATION GUIDELINES FOR FEH CONSULTANTS I AND II

ALLOCATION FACTOR	CONSULTANT I			CONSULTANT II
	RANGE A	RANGE B	RANGE C	
Experience, skills and ability.	Entry level trainee. Emphasis will be placed on training. Consultant will be evaluated on learning ability. Initial training will follow the Case Analysis Manual and its application to intake, investigation, settlements and closing reports. Must demonstrate the ability to write and communicate well. Special attention will be paid to questioning, interviewing, investigating and planning skills and to adherence to the case analysis format in report writing.	Must demonstrate application of the case analysis format and the various laws and regulations enforced by DFEH, i.e., ability to apply analytical and legal theory to full range of complaints, including sexual harassment, disability, retaliation and housing. Must demonstrate improved writing ability up to and including progress reports with recommendations to Legal staff.	First journey level.	Full journeyperson level. Able to demonstrate experience, skills and abilities in the full range of assignments, which can include public speaking, technical assistance, acting as a lead person for Director's Complaints and for training of less experienced staff.
Variety, complexity and kinds of duties.	Duties consist primarily of on-the-job training. Uses assigned cases to test or demonstrate knowledge and skills. New assignments are carefully reviewed and coordinated with immediate supervisor or lead consultant.	Demonstrates the ability to adapt to new situations. Carries a modest caseload consisting of a variety of complaints.	Carries an average caseload ranging from simple to complex legal issues.	Performs the full range of duties, including but not limited to technical assistance, public relations, lead functions. Performs with the highest degree of initiative, independence and originality. May be assigned Director's Complaints and function as a team leader in such assignments.

ALLOCATION FACTOR	CONSULTANT I			CONSULTANT II
	RANGE A	RANGE B	RANGE C	
Personal contacts.	Personal contacts limited to interviewing complainants, witnesses and respondents under close supervision of the immediate supervisor. No direct contact with Department Legal staff.	Initiates contact during normal intake, investigation and settlement attempts of a routine nature.	With experience, develops independence in contacting complainants and respondents.	Interaction with persons outside the general intake, investigation and settlement process can involve the general public and be of sensitive nature, including technical assistance, conducting seminars and interacting with community groups.
Quantitative measures and performance standards. NOTE: Supervisors must consider excused absences and other mitigating circumstances when reviewing performance. Supervisors may use discretion and should consider unique or extenuating circumstances in applying these performance standards.	Investigates and/or closes 18-20 cases. Averages 4 closures per month for the last three months. Closures include at least three negotiated settlements.	6-12 months - Closes 30 cases during the six-month period. Demonstrates the ability to consistently close at least six per month at the end of the probationary period. Obtains a 15 percent settlement rate. Supervisor conducts full case review, including Investigative Work Plans, through completion of probation. Supervisor continues to review charges taken or rejected during intake and all service letters. 12-18 months - Demonstrates increased independence. Closes at least 36 cases for the six-month period. Major errors in intake or case writing -- especially in the area of case analysis format -- are not repeated. The 15 percent settlement rate now includes settlements containing affirmative relief or other creative remedies (when appropriate).	18-24 months - Supervisor conducts random review of charges taken or rejected as a result of intake. Closing reports are reviewed in draft. At least 42 cases are closed during the six-month period. Obtains a 20 percent or greater settlement rate. Demonstrates the ability to write difficult progress reports or complex closing reports, and to prepare interrogatories and subpoenas. 24-30 months - Demonstrates ability to consistently produce at least eight cases per month. Maintains the 20 percent or greater settlement rate and shows increased independence, including self-evaluation of Investigative Work Plans and adequacy of closing reports.	Meets or exceeds standard performance as outlined in Consultant II Performance Appraisal

ALLOCATION FACTOR	CONSULTANT I			CONSULTANT II
	RANGE A	RANGE B	RANGE C	
Supervision received and exercised.	Receives direct and close supervision. Includes regular review of all work products before, during and after assignments. Investigative Work Plan for each case is mandatory. Supervisor accompanies employee on initial field visits and is present at the initial Pre-Determination Settlement attempts and intake interviews.	Supervision is always available to assist in resolving new or unusual problems. Work is reviewed on a prearranged basis. Investigative Work Plan is mandatory and reviewed periodically. Employee may sign routine correspondence following supervisor's approval.	The amount of review continues to decrease as the employee gains experience. Supervision is available to resolve the more difficult problems at the request of the employee. Work is reviewed on an occasional basis. May be delegated responsibility for signing routine correspondence.	General direction is provided or sought only when self-efforts to resolve the most difficult problems are exhausted. Work is reviewed on a random basis for evaluation purposes.
Initiative and originality.	Follows specific and precise directions. Must consult with supervisor before taking action. While in a learning capacity, employee is accompanied on field visits, and observed during intake interviews and settlement attempts.	Follows general work instructions. Must review Investigative Work Plan with supervisor and discuss investigative strategy before field investigation. As experience is gained, begins to demonstrate independence in handling routine cases.	Follows established procedures for case analysis. May exercise a higher degree of independence and judgment by initiating actions subject to post review.	Demonstrates the highest degree of independence and judgment in regularly performing the full range of duties. Applies Department procedures and case analysis methods in the most proficient manner.
Authority to make commitments.	Involved in settlement attempts under direct supervision.	Receives and negotiates settlement agreements subject to approval of direct supervisor.		Authorized to negotiate and accept settlement agreements subject to post review by supervisor.
Working conditions.			May participate in incentive programs, including alternative work week and performance recognition programs.	Allowed to participate in full range of discretionary programs, including but not limited to alternative work week and performance recognition programs.

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

INCOMPATIBLE ACTIVITIES

Officers and employees of the Department of Fair Employment and Housing are responsible to the people of the State of California. They are not responsible to any favored segment or group. State business must be conducted in an impartial manner, enabling all persons to understand that no State employee can be improperly influenced. Officers and employees are to avoid any situation where prejudice, bias, or opportunity for personal gain is the motivating force in the conduct of State Government.

These provisions are <u>not</u> to be construed as the sole provisions of law and administrative rules which must be observed by each officer and employee of the Department regardless of tenure or pay status, including exempt appointees and civil servants. None of the limitations listed below relieve or excuse an officer or employee of liability for any action or omission which is a reason for rejection during probation (Government Code Section 19173), or a cause for adverse action (Government Code Section 19572), or any other applicable provision of law or procedure.

<u>Incompatible Activities Prohibited</u>

"19990. A State officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a State officer or employee or with the duties, functions or responsibilities of his or her appointing power or the agency by which he or she is employed.

Each State officer and employee shall during his or her hours of duty as a State officer or employee and subject to such other laws, rules or regulations as pertain thereto, devote his or her full time, attention and efforts to his or her State office or employment."

Employees may not:

1. Use, for private gain or advantage, State time, facilities, equipment, supplies, badges, identification cards, prestige or influence of a State employee or State employment.

2. Use, for private purpose, State postage, even though reimbursement is made before or after use.

3. Solicit, receive, or accept, directly or indirectly, any gift (including money, service, gratuity, hospitality, etc.) or other thing of value from any person or organization under circumstances from which any party could reasonably infer that the gift was a reward for any official action. Gifts delivered to or left for the employee must be returned if the donor is known. If the donor is unknown, the employee must deliver the gift to a State or charitable institution and a report made to the Personnel Officer through normal channels and in writing.

4. Solicit, receive, or accept money or other consideration from anyone other than the State:

   a. For an act required in the regular hours of State employment as part of their duties as a State officer or employee, or for the performance of such an act outside the regular hours of State employment.

   b. For performing an act either in or outside of the regular course of hours of State employment which the Department would be required or expected to render in the regular course of State business.

   c. For giving oral or written advice or assistance to any person or organization not connected with the Department on any matter relating to the Fair Employment and Housing Act, the Unruh Act, or on any matter which will later be subject to review or control by the Department.

5. Endorse or recommend to the public the use of a commercial product or service, either in one's official capacity or in the name of the Department.

6. Engage in any of the following activities:

   a. Perform any work for private gain or profit, or have any direct or indirect financial, managerial or other interest[1] in any organization, law firm, or consulting firm engaged in eliminating or fostering employment and housing discrimination in California.

   b. Perform any work for or have any direct or indirect financial, managerial or other interest in any organizations representing persons before the Department or the Commission.

   c. Use information developed in the course of discrimination complaint investigations or contained in departmental records or files to perform any statistical, research or other similar informational services outside the course of their work assignment.

   d. Use confidential information for private gain or to the advantage of another; provide confidential information to unauthorized persons; or provide or use the names of persons from Department records for an unauthorized mailing list.

7. Engage in any of the political activities prohibited by the Government Code Sections 3201-3209, or by the Hatch Act [5 U.S.C. Sec. 1502(a)]:

   a. Under the Government Code, employees may not:

      1) Solicit or receive any assessment, subscription, contribution, or service for any political purpose from anyone on an employment list, or any State officer or employee.

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[1]"Other interest" does not preclude membership in bar associations, community organizations, etc.

2) Permit entry onto State premises under his/her control any person whose purpose is to make, collect, receive, or give notice of any political assessment, subscription or contribution. No person may send any letter of notice to a State premise for these purposes nor may any person on a State premise perform such activities.

3) Promise to use their official authority or influence to obtain civil service benefits for any person on the condition that the person or anyone else aid any candidate, officer, or party, if such employees have been nominated for or are seeking any elective office. Such employees may not promise or threaten to use their official power in order to coerce or persuade the vote or political action of a State officer or employee.

b. Under the Hatch Act, employees may not:

1) Use official authority or influence for the purpose of interfering with, or affecting the result of, an election or a nomination for office.

2) Directly or indirectly, coerce, attempt, command, or advise a State or local officer to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes.

3) Be a candidate for partisan elective offices.

c. Under the Hatch Act, employees <u>may</u>:

1) Be a member of such organizations as the Mexican-American Political Association, Young Republicans, County Central Committee of a party, Young Democrats, etc.

2) Express opinions on political subjects and candidates.

3) Attend and participate in political rallies and conventions.

4) Sign nominating petitions in support of individuals who wish to become candidates for office.

5) Make voluntary contributions to regularly constituted political organizations, provided such contributions are not made in a State or Federal building or to some other officer or employee of the Department or Commission, or to any other officer or employee who is subject to the Hatch Act, wear political badges or buttons or display political stickers on private automobiles. However, to assure that no member of the public will believe political bias is being exercised for or against him/her, employees who have direct contact with the public are prohibited from making any partisan display such as wearing a badge or button during working hours.

6) Participate in nonpartisan political activities, such as supporting or opposing a candidate for, or becoming a candidate for, nonpartisan office.

8. Engage in an employment activity or enterprise which involves such time demands as would render performance of his or her duties as a State officer or employee less efficient.

All employees are responsible for adherence to these restrictions on political activities. Any employee in doubt as to whether any particular activity is prohibited should contact his/her Supervisor in writing and request a decision, prior to engaging in the activity. Any employee violating these restrictions on political activity may be subject to punitive action, and to criminal penalties, where applicable.

The Department does not wish to unnecessarily inquire into the private affairs of its employees. It does, however, request their cooperation in avoiding any activities which will cause embarrassment to it and the State of California. An employee must contact his/her supervisor if he/she plans to undertake any activities which might be considered inconsistent, incompatible, or in conflict with his/her duties as a State employee or with the duties, functions or responsibilities of the Department. If the supervisor is unable to make a determination, he/she shall refer the matter to the Personnel Officer.

An employee in Bargaining Units #1 and #4 may request that the Department grant an exception to the prohibitions on outside employment contained in the incompatible activity statement. If the exception is denied it shall be reviewed, upon request by the employee, by a committee composed of two representatives of the Department and two representatives of the union. The committee will issue a recommendation within fifteen (15) calendar days to the Director or his designee for decision. The Director or designee shall issue a written decision within fifteen (15) calendar days.

An employee in Bargaining Unit #2 may request that the Department grant an exception to the prohibitions on outside employment contained in the Incompatible Activity Statement. If the exception is denied, upon request by the employee, it shall be reviewed by a committee composed of two representatives of the Department and two representatives of ACSA. The committee will issue a recommendation to the Director or designee for decision.

I hereby certify that I have received and read a copy of the Incompatible Activities Statement.

_____ _____

Employee's Signature Date

After signing the above statement, return to Personnel Office and retain copy for your records.

State of California

State and Consumer Services Agency

Memorandum

Date : November 7, 2001

To : Dennis Hayashi, Director
Andrea Rosa, Deputy Director, Legislation & Policy Development

From : **Department of Fair Employment & Housing**
Lisa Campbell
Staff Counsel, Legislation and Policy Development
(916) 227-2877 ATSS 8-498-2877

Subject : Historical Overview of the Department of Fair Employment and Housing

I. HISTORICAL OVERIEW OF DEFH

- Prior to 1959, the legislature had enacted the California Civil Rights Act (CCRA) which prohibited discrimination in certain specified places of public accommodation. This prohibition was codified in Civil Code section 51 and 52.

- In 1959, the CCRA was repealed and section 51 and 52 of the Civil Code were amended and became the Unruh Civil Rights Act. (1959, c. 1866) In that same year, the legislature adopted the California Fair Employment Practice Act (FEPA) that was formerly codified in the Labor Code at section 1410 et seq. The FEPA was a comprehensive police power measure that greatly enlarged the scope of its protections, and expanded the remedies against employers for prohibited discrimination in employment.

- FEPA created the Fair Employment Practice Commission (FEPC) and the Division of Fair Employment Practices within the Department of Industrial Relations.

- FEPC administered the FEPA. The FEPC was comprised of seven commissioners who were responsible for receiving the complaints, conducting the investigations, conciliating complaints and issuing decisions on allegations of discrimination in employment and housing. The commission received some assistance in the accomplishment of its duties from the Division of Fair Employment Practices of the Department of Industrial Relations.

  However, the case processing was very slow due to the structure of the FEPC and a wide variety of different interpretations of the law were rendered by the individual commissioners on similar cases causing a lack of uniformity. The FEPA did not provide for any specific statutory time requirements for the filing of complaints or the processing of complaints by FEPC. Hence, an increasing two-year backlog of cases resulted from the structure of the FEPA.

- In 1977, the legislature passed A.B. 738 which reorganized the infrastructure of FEPC and the division of labor between the Commission and the Division of Fair Employment Practices (Division) within the Department of Industrial Relations.

A.B. 738 provided a clear delineation between the functions of the Commission and the Division. The Division was accorded the primary responsibility of investigating, conciliating, and if warranted prosecuting all complaints alleging discriminatory practices. The Commission was accorded the primary responsibility of promulgating rules and regulations on discriminatory practices, providing for an administrative hearing officer system within the Commission to hear all accusations filed by the division and to require hearing officers to issue decisions based on the record creating consistent administrative case law.

A.B. 738 also imposed time limits on the processing of complaints, the conciliation efforts, and the on setting cases for hearing. These time limits as stated by the author, Assemblymember Bill Lockyer, was to attempt to provide quick and equitable relief to complaints. AB 738 imposed the requirement that the Division must file an accusation within one year of the filing of the complaint. The commission was required to conduct a hearing on an accusation within 90 days after it had been issued. Lastly, if an accusation is not issued within 150 days after the complaint is filed, the division would be required to notify all persons who have filed a compliant notifying them that they are authorized to bring a civil action against the employer and that they have one year from receipt of the notice to commence a civil action against the employer.

- In 1979, the Governor, under the Governor's Reorganization Plan No. 1 (the Plan) repealed the Fair Employment Practices Act that was codified in the Labor Code and created the California Fair Employment and Housing Act (FEHA) which is now codified in the Government Code.

  The Plan abolished the Division of Fair Employment Practices and the Fair Employment and Housing Practice Commission within the Department of Industrial Relations. The Plan created a new department, the Department of Fair Employment and Housing (DFEH) within the State and Consumer Services Agency. The Plan also created the Fair Employment and Housing Commission (FEHC) within the DFEH. The Plan transferred to the new DFEH and the new FEHC the responsibilities previously delegated to the Division of Fair Employment Practices and the Fair Employment and Housing Practice Commission, respectively. The newly created FEHA, maintained the previous statute of limitations imposed by A.B. 738 that required the filing of an accusation, if at all, within one year after the filing of the complaint. Also, FEHA required DFEH to notify the complainant of the right to sue if after 150 days an accusation is not filed. (See, Gov. Code, § 12965, subds. (a) and (b).)

- In 1980, A.B. 3165 was passed codifying the Governor's Reorganization Plan No. 1 of 1979 and formally implementing the Plan. DFEH was formally removed from the Department of Industrial Relations to the State and Consumer Services

Agency. Also the Fair Employment and Practices Act (Labor Code 1410-1433) and the Rumford Fair Housing Act (Health and Safety Code 35700 – 35745) was recodified into the Government Code as the Fair Employment and Housing Act. There was no opposition to this bill.

- In 1981, A.B. 1747 was passed which amended Government Code Section 12903 to separate the Department of Fair Employment and Housing and the Fair Employment and Housing Commission (FEHC). Prior to this amendment, the FEHC was located within the DFEH. Because the DFEH was responsible for the enforcement of the state's discrimination laws and the Commission was responsible for adjudicating charges of discrimination, it was believed that a separation was necessary to avoid the appearance of conflict. As a result of A.B. 1747, FEHC was placed within the State and Consumer Services Agency.

  Another point of significance, A.B. 1747 was amended during the course of hearings to give DFEH authority to accept and investigate complaints of discrimination including discrimination based on age in apprenticeship programs. Prior to A.B. 1747, the Department of Industrial Relations, Division of Apprenticeship Standards, had handled discrimination complaints in the apprenticeship program. During the hearing before the Assembly Committee on Labor and Employment, it was argued that, "because the FEHC is the primary state agency charged with enforcement of anti-discrimination laws, it is more appropriate for this agency to handle such complaints."

II. ARGUMENTS AGAINST RELOCATING UNDER DEPARTMENT OF INDUSTRIAL RELATIONS.

DFEH does not share the same or similar purpose or mission, as the Department of Industrial Relations (DIR). DFEH's primary purpose is to enforce California's anti-discrimination statutes and be a neutral fact-finder of complaints of discrimination in employment, housing, and public accommodations. It is also to enforce the state's hate violence statutes. On the other hand, the primary purpose of DIR is to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (See Exhibit A). Additionally, it is responsible for the development and enforcement of occupational safety and health standards relating to issues under the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), and the enforcement of the Fair Labor Standards Act of 1938. DIR is solely focused on labor issues as it is clearly a labor-related agency.[1]

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[1] Sections 50.5 through 50.7 of the Labor Code identify the specific functions of DIR: 1) **Section 50.5** provides that the functions of the **DIR** is to foster, promote, and develop the welfare of the

- The inclusion of DFEH in DIR would severely impact the effectiveness of DFEH for several reasons:

1. The employer community would not perceive the new agency as neutral, but as aligned with the employee which will hamper investigations and an already difficult process of settlement agreements.

2. The current DIR has within it a Division of Labor Standards and Enforcement. The division's primary focus is on labor relation and employer and employee relations. DIR is also focused on the enforcement of substandard working conditions, wage and payment complaints, vacation, severance pay and much more as it relates to the interrelationship between employer and employees.

3. DFEH is responsible for the enforcement of the state's hate violence statutes under the Ralph Civil Rights Act, which is not related to any policy mission of DIR.

4. DIR is concerned with the day-to-day functions of the employer and employee relationship. This includes wage and compensation disputes, disability insurance and workers' compensation disputes and severance disputes. None of these disputes are remotely related to anti-discrimination practices of an employer.

5. DIR divides its work of into six divisions known as the Division of Workers' Compensation, the Division of Occupational Safety and Health, the Division of **Labor** Standards Enforcement, the Division of **Labor** Statistics and Research, the Division of Apprenticeship Standards, and the State Compensation Insurance Fund. None of which are related to anti-discrimination statutes. (Lab. Code, § 56.)

6. DFEH is also authorized to provide its services and assistance to communities in resolving disputes and disagreements arising out of discriminatory practices and to repair community relations after hate crimes are committed.

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wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment;

Section 50.6. DIR assists and cooperates with the Wage and Hour Division, and the Children's Bureau, United States Department of Labor, in the enforcement within this State of the Fair Labor Standards Act of 1938.

Section 50.7 The **DIR** is designated to be responsible for administering the state plan for the development and enforcement of occupational safety and health standards relating to issues covered by corresponding standards promulgated under the federal Occupational Safety and Health Act of 1970.

If DFEH is incorporated within the proposed Labor and Civil Rights Agency, it may generate unnecessary confusion for the public regarding the department's duties and functions and affect the effectiveness the department will have in achieving the healing required following these types of disputes and disagreements. The Department's ability to carry out its charge will be affected.

7. Lastly, the creation of this agency is also at the fiscal expense of DFEH. The reallocation of approximately $1 million dollars from DFEH either temporarily or permanently, will reduce the effectiveness of both enforcement and implementation of the Fair Employment and Housing Act, the Unruh Civil Rights Act, and the Ralph Civil Rights Act. The protection from discrimination in employment, housing, public accommodations and the protection against hate violence are all part of the purview covered by the DFEH.

- If DFEH were transferred to DIR, the economic impact on DFEH's fiscal resources would be jeopardized and would be diverted from DFEH's budget to support the transfer into DIR. The public would be deprived of the benefits of the current fiscal status within DFEH and current programs and services would be either scaled back or terminated due to lack of funding.

III. OTHER STATES' INFORMATION

Many states comparable to California have labor-related agencies or departments, however, these agencies do not include the departments that enforce and prevent discrimination.

For example, the states of Texas, New York, Florida, Pennsylvania, Ohio, New Jersey, and Michigan all have umbrella departments that include all key labor law areas: labor standards, occupational safety, unemployment insurance, workers' compensation and job training. However, these states have stand-alone departments, commissions or boards specifically enforcing the laws of discrimination in employment, housing and other civil rights laws. For example, in Florida, the Florida Commission on Human Relations and in Michigan, the Michigan Department of Civil Rights enforces the anti-discrimination statutes of their states. All of them report directly to the Governor of their respective states except New Jersey. In New Jersey, the division of civil rights reports to the Attorney General who reports to the Governor. (See chart below.)

State	"Labor Department"	"Civil Rights/Discrimination Enforcement Agencies"
Florida	Department of Labor and Employment Security	Commission on Human Relations
Georgia	Department of Labor	Commission on Equal Opportunity
Illinois	Department of Employment Securities	Department of Human Rights
Massachusetts	Department of Labor and Workforce Development	Commission Against Discrimination; Human Resources Division
Michigan	Department of Consumer & Industry	Department of Civil Rights
New Jersey	Department of Labor	Division of Civil Rights
New York	Department of Labor	Division of Human Rights
Ohio	Bureau of Employment Services	Civil Rights Commission
Pennsylvania	Department of Labor and Industry	Human Relations Commission
Texas	Workforce Commission	Commission on Civil Rights

Furthermore, it should be noted that the United States Department of Labor (DOL) does not include the Equal Employment Opportunity Commission (EEOC) or the Department of Housing and Urban Development (HUD), both federal agencies that enforce the federal anti-discrimination laws. EEOC reports directly to the Congressional Oversight Committee on Education and Workforce.

LABOR CODE STATUTES REGARDING DEPARTMENT OF INDUSTRIAL RELATIONS

50. There is in the state government the Department of Industrial Relations.

50.5. One of the functions of the Department of Industrial Relations is to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment.

50.6. The Department of Industrial Relations may assist and cooperate with the Wage and Hour Division, and the Children's Bureau, United States Department of **Labor**, in the enforcement within this State of the Fair **Labor** Standards Act of 1938, and, subject to the regulations of the Administrator of the Wage and Hour Division, or the Chief of the Children's Bureau, and subject to the laws of the State applicable to the receipt and expenditures of money, may be reimbursed by the division or the bureau for the reasonable cost of such assistance and cooperation.

50.7. (a) The Department of Industrial Relations is the state agency designated to be responsible for administering the state plan for the development and enforcement of occupational safety and health standards relating to issues covered by corresponding standards promulgated under the federal Occupational Safety and Health Act of 1970 (Public Law 91-596). The state plan shall be consistent with the provisions of state law governing occupational safety and health, including, but not limited to, Chapter 6 (commencing with Section 140) and Chapter 6.5 (commencing with Section 148) of Division 1, and Division 5 (commencing with Section 6300), of this **code**.

(b) The budget and budget bill submitted pursuant to Article IV, Section 12 of the California Constitution shall include in the item for the support of the Department of Industrial Relations amounts sufficient to fully carry out the purposes and provisions of the state plan and this **code** in a manner which assures that the risk of industrial injury, exposure to toxic substances, illness and death to employees will be minimized.

(c) Because Federal grants are available, maximum Federal funding shall be sought and, to the extent possible, the cost of administering the state plan shall be paid by funds obtained from federal grants.

(d) The Governor and the Department of Industrial Relations shall take all steps necessary to prevent withdrawal of approval for the state plan by the Federal government. If Federal approval of the state plan has been withdrawn before

passage of this initiative, or if it is withdrawn at any time after passage of this initiative, the Governor shall submit a new state plan immediately so that California shall be approved and shall continue to have access to Federal funds.

50.8. The department shall develop a long range program for upgrading and expanding the resources of the State of California in the area of occupational health and medicine. The program shall include a contractual agreement with the University of California for the creation of occupational health centers affiliated with regional schools of medicine and public health One such occupational health center shall be situated in the northern part of the state and one in the southern part. The primary function of these occupational health centers shall be the training of occupational physicians and nurses, toxicologists, epidemiologists, and industrial hygienists. In addition, the centers shall serve as referral centers for occupational illnesses and shall engage in research on the causes, diagnosis, and prevention of occupational illnesses. The centers shall also inform the Division of Occupational Safety and Health Administration of the Department of Industrial Relations, State Department of Health Services, and the Department of Food and Agriculture of their clinical and research findings.

50.9. In furtherance of the provisions of Section **50**.5, the director, or the Director of Employment Development, may comment on the impact of actions or projects proposed by public agencies on opportunities for profitable employment, and such agencies shall consider such comments in their decisions. 51. The department shall be conducted under the control of an executive officer known as Director of Industrial Relations. The Director of Industrial Relations shall be appointed by the Governor with the advice and consent of the Senate and hold office at the pleasure of the Governor and shall receive an annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government **Code**.