



# TRACKING OUTCOMES: 2019 REPORT TO THE JOINT LEGISLATIVE BUDGET COMMITTEE

(Fulfills the Requirements of the Supplemental Report of the  
2016-17 Budget Act, Item 1700-001-0001)

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

March 1, 2019

**Kevin Kish, Director**

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# INTRODUCTION AND BACKGROUND

The Supplemental Report of the 2016 Budget Act, item 1700-001-0001, requires the Department of Fair Employment and Housing (DFEH) to report case-processing data to the Joint Legislative Budget Committee. In 2016, DFEH requested \$2.5 million and 28 positions for fiscal year 2016-2017 and \$2.8 million in on-going funds to carry out mission-critical functions. Specifically, 24 positions were directed to the Enforcement Division to address complaint investigation workloads, two positions were directed to address Public Record Act (PRA) requests, and two positions were directed to establish a Training Unit to create training modules, create consistent and accurate training materials and reference guides, and to provide necessary initial and ongoing training to all investigators. As reported below, since 2016 DFEH has made significant improvements in our case-processing function.

## THE COMPLAINT PROCESS

DFEH's mission is to protect the people of California from unlawful discrimination in employment, housing, and public accommodations, and from hate violence and human trafficking. To accomplish this mission, the Department receives, investigates, conciliates, mediates, and prosecutes complaints of alleged violations of the Fair Employment and Housing Act (FEHA), Unruh Civil Rights Act, Disabled Persons Act, Ralph Civil Rights Act, Trafficking Victims Protection Act, and statutes prohibiting discrimination in state-funded activities and programs.

The complaint process begins with a complainant filing an intake form with DFEH. Individuals can file an intake form online, by telephone, in person, or by mail. When an intake form is received for investigation, the Enforcement Division conducts an initial assessment to ensure DFEH has jurisdiction over the case. Some number of cases are closed at this intake stage for lack of jurisdiction. If DFEH has jurisdiction over a case, and the complainant presents a cognizable claim, a complaint is drafted by the Enforcement Division, signed by the complainant, and then served upon the respondent. Service of the complaint starts the investigatory process, which involves receipt of a response from the respondent, interviews of witnesses, and an assessment of the merits of the case. Enforcement Division personnel may also help the parties to settle the case. The investigatory process can also involve formal discovery, including issuance of subpoenas enforced in court. DFEH, by law, must complete investigative work on most cases within one year of the date of the signed complaint.

Most of the cases DFEH investigates are closed by the Enforcement Division, either because the cases settle, or because they are found to lack merit. If a case is found to have merit, but is not settled by enforcement, it is referred to DFEH's Dispute Resolution Division, comprised of 12 professional neutrals (mediators) who work statewide. Cases that are not settled in the Dispute Resolution Division are referred to DFEH's Legal Division, which may file and prosecute a civil complaint in court.

## THE REQUEST FOR ADDITIONAL RESOURCES

In 2016, DFEH had 189.8 authorized positions. This staffing level was only 56% of DFEH's staffing level in 2000, when DFEH had a total of 336.6 positions.<sup>1</sup> Despite having 146.8 fewer positions in 2016 than it did in 2000, DFEH did not have fewer responsibilities or offer fewer services. In fact, some workloads had increased because of new statutory mandates. In 2016 DFEH simply did not have the resources to do the job it was created to do within the one-year statutory time limit for completing civil rights investigations.

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<sup>1</sup> This number included 11.8 positions for the Fair Employment and Housing Commission, an administrative adjudication body of the DFEH that has since been abolished and replaced by the Fair Employment and Housing Council, a regulatory body.

## EXECUTIVE SUMMARY

Upon legislative approval of the increased staffing request, DFEH began the hiring process. Within one year, the newly hired Training Unit had created statewide training modules and materials for onboarding new investigators and had implemented ongoing training programs for more experienced investigators. These efforts continue.

By the end of 2017, DFEH had completely eliminated the so-called “holding tank,” or backlog of cases awaiting assignment to investigators to make first contact with complainants. This means that all complainants who file an intake form now immediately receive an appointment date and time for their initial interview.

In November 2017, after over a year of development, DFEH launched a new case filing and case management system, Cal Civil Rights System (CCRS). The cloud-based platform allows members of the public and their representatives to submit complaints online for all of the civil rights laws DFEH enforces. Individuals can schedule appointments, view the status of their cases, submit notes to staff, request right-to-sue notices for court filing, or submit Public Records Act requests, all online. CCRS was designed to be compatible with screen readers and other assistive technologies, is securely encrypted, and can be modified to respond to changes in the law, advances in technology, and the needs of the public. As of June 2018, the system is available in Spanish.

Highlights of case-processing improvements since 2016 include:

- Complainants are immediately informed of the date and time of their intake interviews upon submission of intake forms.
- The average number of days for DFEH to close a case filed for investigation dropped from 170 days in 2016 to 109 days in 2018.
- The average number of days for a signed complaint to be served on respondents in dual-filed employment cases dropped from 17 days in 2016 to 7 days in 2018.
- In 2018, 100% of cases were closed within the one-year statutory time limit.
- No DFEH investigations were rejected or remanded by our federal partners in 2018 for incomplete or inadequate investigation.

# ASSESSMENT

As required by the Supplemental Report for the 2016 Budget Act, this report includes the following information for each calendar year, January 2017 through December 31, 2018:

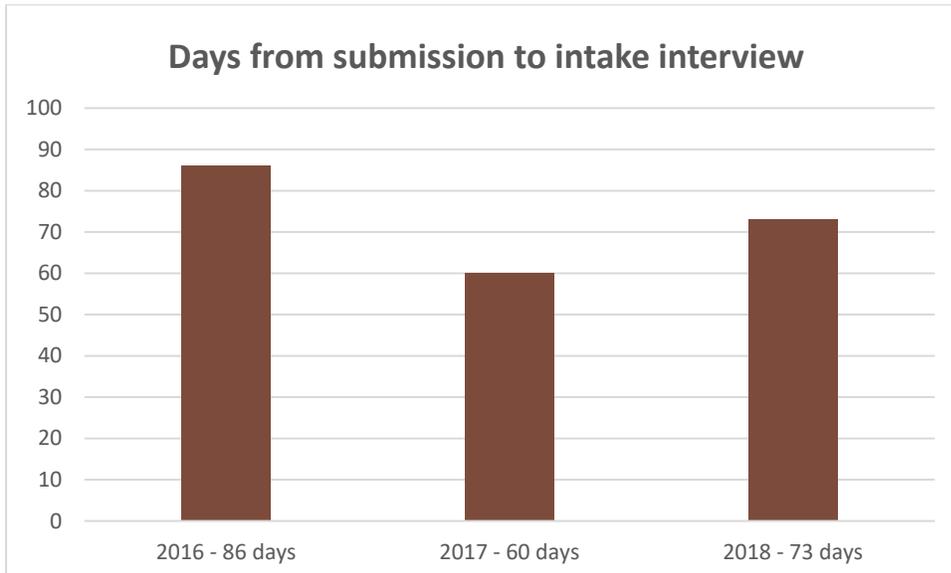
- a) Average number of days between receipt of a pre-complaint inquiry (now called an intake form) and the intake interview.
- b) Number of cases for which the amount of time between receipt of a pre-complaint inquiry (intake form) and the intake interview exceeds 30 days.
- c) Average number of days for complaints to be served on respondents, differentiated by complaints dual-filed with U.S. Department of Housing and Urban Development or U.S. Equal Employment Opportunity Commission and those not dual-filed.
- d) Number of dual-filed cases not served within 10 days.
- e) Number of non-dual-filed cases not served within 60 days.
- f) Average number of days to close a case.
- g) Percentage of cases closed within 100, 180, 275 and 365 days.
- h) Number of cases rejected by the U.S. Equal Employment Opportunity Commission for payment due to quality reasons.
- i) Number of cases remanded by the U.S. Department of Housing and Urban Development because of incomplete or inadequate investigation.

## **A. AVERAGE NUMBER OF DAYS BETWEEN RECEIPT OF AN INTAKE FORM AND THE INTAKE INTERVIEW**

Historically, DFEH placed intake forms (previously called “pre-complaint inquiries”) in a “holding tank” to await being assigned to investigators to make first contact with complainants. During the time the intake was pending assignment, DFEH did not contact complainants, who had no information about the status or timeline of their case during that period. In 2016, the number of intake forms in the holding tank had climbed to over 1,500. This created long delays between the complainants’ submissions of intake forms to the first contact with DFEH staff to schedule an intake appointment.

By the end of 2017, DFEH had cleared the backlog of cases in the holding tank in preparation for the implementation of CCRS, the new online case filing system. This means that many intake forms submitted in 2017 were cleared from the holding tank and scheduled for intake interviews in 2018. In the chart below, the average number of days from submission to intake interview in 2018 is 73 days, an improvement over the 2016 number but an uptick from the 2017 number. The 2018 number reflects the timelines for those cases cleared from the holding tank in 2017 and scheduled for intake interviews in 2018. Now that there is no backlog of unassigned cases, we anticipate that the timeframe from intake receipt to intake interview will

continue to trend downward. In addition, complainants now receive the date and time of their intake interview immediately upon submission of their intake form.



**B. NUMBER OF CASES FOR WHICH THE AMOUNT OF TIME BETWEEN RECEIPT OF AN INTAKE FORM AND THE INTAKE INTERVIEW EXCEEDS 30 DAYS**

Calendar Year	Number of cases that exceed 30 days from receipt of intake form to intake interview
2016	5610
2017	5782
2018	6031

**C. AVERAGE NUMBER OF DAYS FOR COMPLAINTS TO BE SERVED ON RESPONDENTS, DIFFERENTIATED BY COMPLAINTS DUAL-FILED WITH U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) OR U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) AND THOSE NOT DUAL-FILED**

EMPLOYMENT CASES	Calendar Year	Average days for cases dual-filed with EEOC	Average days for Non-Dual filed cases
	2016	17	16
	2017	11	12
	2018	7	13

HOUSING CASES	Calendar Year	Average days for case dual-filed with HUD	Average days for Non-dual filed cases
	2016	5	9
	2017	6	9
	2018	4	3

**D. NUMBER OF DUAL-FILED CASES NOT SERVED WITHIN 10 DAYS**

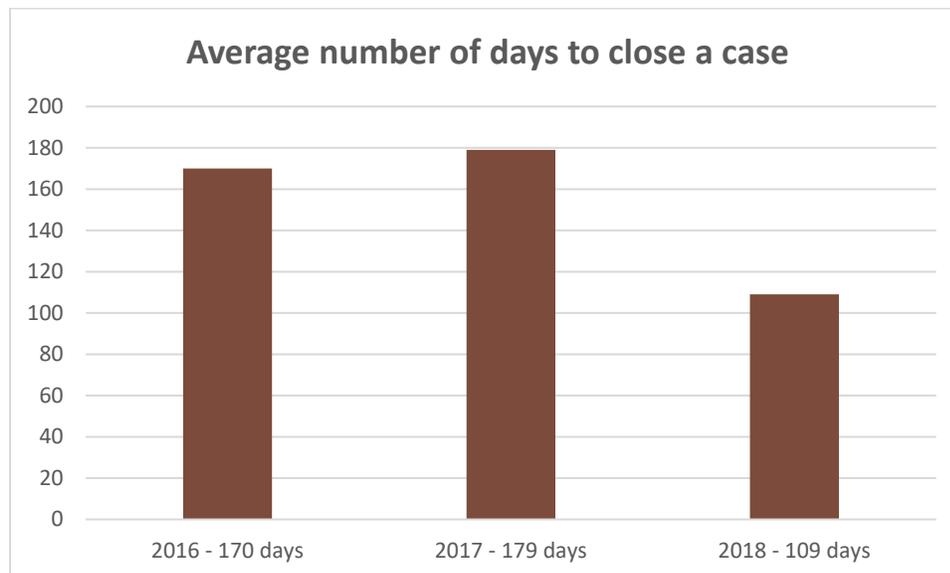
Employment	Total number of dual-filed cases served	Total number of dual filed cases not served within 10 days
2016	2737	1162 (42%)
2017	3089	909 (29%)
2018	2508	344 (14%)
Housing		
2016	787	50 (6%)
2017	781	86 (11%)
2018	445	23 (5%)

## E. NUMBER OF NON-DUAL-FILED CASES NOT SERVED WITHIN 60 DAYS

Employment	Total of non-dual-filed cases served	Total of non-dual filed cases served 60+ days
2016	928	39 (4%)
2017	1422	46 (3%)
2018	1110	59 (5%)
Housing		
2016	145	2 (1%)
2017	229	6 (2%)
2018	160	0 (0%)

## F. AVERAGE NUMBER OF DAYS TO CLOSE A CASE

The average number of days it takes DFEH to close a case has dropped significantly, reflecting efficiencies achieved through the increase in staffing as well as process improvements. In 2016, it took an average of 170 days from the date of a signed, verified complaint to the date the case was closed. In 2018 the average number of days from signed complaint to case closure dropped to 109 days.



## G. PERCENTAGE OF CASES CLOSED WITHIN 100, 180, 275 AND 365 DAYS.

	Within 100 days	Within 180 days	Within 275 days	Within 365 days
2016	20%	34%	49%	89%
2017	46%	56%	72%	98%
2018	64%	83%	93%	100%

By way of comparison with the numbers in this chart, DFEH notes that a January 1997 audit report of the Bureau of State Audits found that fully 30% of all investigations conducted by DFEH exceeded the 365-day statutory time limit. At that time, DFEH employed 260 employees, more than are employed today. As the chart reflects, 100% of cases in 2018 were closed within the statutory time limit.

## H. NUMBER OF CASES REJECTED BY THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR PAYMENT DUE TO QUALITY REASONS.

From September 2016 to September 2017, EEOC rejected one case for payment due to quality reasons. EEOC rejected no cases for payment from September 2017 to September 2018.

## I. NUMBER OF CASES REMANDED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT BECAUSE OF INCOMPLETE OR INADEQUATE INVESTIGATION.

	Volume of cases dual- filed with HUD	# remanded due to incomplete or inadequate investigation
2016	787	9 (1.1%)
2017	781	19 (2.4%)
2018	456	0 (0%)