

December 26, 2019

Alexis Podesta, Secretary
California Business, Consumer Services and Housing Agency
915 Capitol Mall, Suite 350-A
Sacramento, CA 95814

Dear Ms. Alexis Podesta,

In accordance with the State Leadership Accountability Act (Leadership Accountability), the Department of Fair Employment and Housing submits this report on the review of our internal control and monitoring systems for the biennial period ending December 31, 2019.

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

GOVERNANCE

Mission and Strategic Plan

MISSION

The Department of Fair Employment and Housing (DFEH) is the institutional centerpiece of California's broad anti-discrimination and hate violence policy. Born out of a decades-long struggle to prohibit discrimination in employment, housing, and business establishments, the DFEH has been at the forefront of protecting civil rights in California since its inception. Today, the Department of Fair Employment and Housing is the largest state civil rights agency in the country with 238 full-time permanent staff operating out of five offices throughout California.

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

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

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

ensure that the FEHA is interpreted and implemented in a way that is fair and that protects the public to the full extent of the law.

STRATEGIC GOALS

Goal 1: Increase access to information about rights and responsibilities.

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

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

Objective #3: Improve outreach to people with disabilities

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

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

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

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

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

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

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

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

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

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

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

Objective #1: Improve how we gather and manage information.

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

Objective #3: Develop standards and tools for measuring our performance

Objective #4: Continually evaluate and improve our internal processes and systems

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

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

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

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

Objective #4: Provide staff with more professional development resources

Control Environment

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

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

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

VALUES

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

Accountability

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

Commitment to Justice

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

Customer Service

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

Excellence

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

Fairness

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

Integrity

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

Teamwork

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

Information and Communication

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

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

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

Development (HUD).

MONITORING

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

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

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

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

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

RISK ASSESSMENT PROCESS

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

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

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

In addition to engaging in ongoing processes for identifying and planning for the mitigation of risks, the Department takes additional steps in preparing its SLAA report. The SLAA Coordinator presents Executive Staff and the management team with SLAA information including a series of questions related to risks in our environment. Each Division Chief and subordinate managers were required to review their individual areas utilizing these questions to identify any significant issues that could potentially impact the Department's ability to effectively carry out its mission.

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

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

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

RISKS AND CONTROLS

Risk: Investigator Classifications

The current classification level used for the investigator role in the DFEH Enforcement Division is Staff Services Analyst (SSA)/Associate Governmental Program Analyst (AGPA). The workload requires complex legal analysis and decision-making in civil rights disputes. The workload is significantly more complex and demanding than those for SSA/AGPAs working in the same classifications in other departments. DFEH has experienced a high turnover rate in these positions and recruitment and retention have suffered.

Control: Job Analysis

DFEH plans to conduct a job analysis and desk audit in conjunction with CalHR in order to identify other potential investigator classifications that may be more appropriate for the level of work performed. Properly aligning the core duties with a more appropriate classification may alleviate the recruitment/retention issues.

Risk: Statutory Timelines for Investigations

DFEH has one year from the date of a verified complaint to investigate, reach merit conclusions, mediate, and file a civil action, if warranted. DFEH loses jurisdiction over a case after one year. Complaint numbers continue to rise, while staffing levels fluctuate and DFEH cannot keep pace. Beginning January 1, 2020, complainants with employment grievances will have three years (increased from one year) to file with DFEH, which will result in still more complaints. DFEH's timeline for

completing investigations has not changed.

Control: Budget Change Proposal

DFEH submitted a legislative budget change proposal to the Department of Finance (DOF) to request additional staffing after the passage of Assembly Bill 9 (AB 9), which increased the statute of limitations for the department to investigate and file a civil action from one year to three. However, because the full impact of AB 9 was unclear at the time of submission, DOF only approved 3 of the requested 19 permanent positions. DFEH will continue to monitor and assess workload associated with AB 9 and submit data to support the request for resources if greater workload materializes in order for the department to meet its statutory requirements related to investigations.

Risk: Investigator Training

The current classification level used for the investigator role in Enforcement is SSA/AGPA. The workload requires complex legal analysis and decision-making in civil rights disputes. Training staff on legal terminology, investigatory techniques, and processes is crucial to ensure competent investigations. These trainings require extensive time and staff hours to prepare. Workloads prevent staff from attending extensive training.

Control: Curriculum Development

DFEH has hired a dedicated Staff Services Manager II (Supervisor) to evaluate and oversee current overall departmental training content and procedures, with an emphasis on investigatory training. DFEH expects that this high-level position will work with enforcement managers and staff to refine current training modules and methods, in order to ensure that investigators are properly trained to research complaints, provide customer service, manage caseloads and file required documentation in an effective and efficient manner.

Risk: Succession Planning

Several key personnel are eligible for retirement in the coming years. DFEH needs to ensure that there is sufficient knowledge transfer and training/mentoring of staff as the workforce changes. Having desk manuals readily available for new staff is imperative.

Control: Succession Plan Development

DFEH plans to develop a succession plan that provides the following:

- Identifies and prioritizes leadership positions
- Identifies talent pool and gaps
- Clearly articulates the department's succession planning strategies

This plan will complement the department's workforce plan, fulfill the CalHR requirement to develop a succession plan, and help the department's strategic long-term recruitment and retention goals.

Risk: Space Limitations

DFEH operates out of 5 offices. In 4, there is no room for expansion. Legislative changes have increased DFEH's workload. To the extent these changes result in an increase the size of the department, there is no space to place the new positions.

Control: Budget Change Proposal/Funding Requests

The Department of Finance (DOF) tentatively approved a DFEH request for some limited additional funding for added departmental space in a 2020-21 Budget Change Proposal. DFEH plans to develop a Spring Finance Letter, in conjunction with DOF, to request additional necessary funding for tenant improvements and construction, office furniture, moving expenses and ongoing rental and other costs for additional leased space to accommodate this increased staffing, and submit additional requests for resources if greater workload materializes.

Risk: Federal Funding Gap

DFEH's budget is made up of general fund authority and federal fund authority based on our contracts with federal workshare partners, the Equal Employment Opportunity Commission (EEOC) and Housing & Urban Development (HUD). Cases can be "dual-filed" between both DFEH and its federal counterpart, or the federal agency frequently assigns its own cases to DFEH to investigate. Federal partners have historically not fully reimbursed DFEH for its costs to investigate these cases; DFEH's reimbursements from the federal government are historically lower than the budget authority the department is provided for federal funds. For example, the Department's federal fund authority for FY 2018-2019 was \$5,698,000. However, the federal government only reimbursed DFEH for \$5,105,282, creating a \$592,718 structural deficit. In FY 2019-20. the department's federal authority is \$5,750,000; however, the federal government only reimbursed DFEH for \$5,193,791, creating a \$556,209 shortfall. Because the federal government's reimbursement rates do not fully reflect the scope and breadth of all DFEH investigatory costs, DFEH enters into each fiscal year with a structural deficit resulting from the gap between the federal fund authority and the projected receipts based on contract.

Control: Position Vacancies-Salary Savings

DFEH must maintain several vacancies throughout the year and implement other cost savings initiatives in order to cover the structural deficit and pay all necessary costs. DFEH will continue to work with federal partners and submit additional requests to the Department of Finance (DOF) for additional funding and resources, if necessary, in order to ensure that the department can meet all of its obligations.

CONCLUSION

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

Kevin Kish, Director

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