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A Phoenix Rises from the Budgetary Ashes

By Phyllis W. Cheng

In mythology, the phoenix rises from the ashes of its burned nest to be reborn. Like the phoenix, the California Department of Fair Employment and Housing (DFEH or Department) has transformed itself under the State's fiscal austerity to become a more effective and efficient civil rights agency.

Change is about managing risk. Organizations and the people who run them will take active steps toward the unknown only if they genuinely believe that the risks of standing still are greater than those of moving forward in a new direction. The sobering multi-billion dollar State budget deficit has harnessed the necessary leap of faith for innovation at the DFEH.

The Department is charged with enforcing the Fair Employment and Housing Act (FEHA), Unruh Civil Rights Act, Ralph Civil Rights Act and Disabled Persons Act. It takes in, investigates, conciliates, mediates and prosecutes about 20,000 discrimination, harassment and retaliation complaints per year. Not unlike other bureaucracies, since its 1980 inception, the DFEH had settled into a certain routine in carrying out its mission. However, business as usual ended with the State's mounting budget deficit—which triggered unavoidable two- and three-day furloughs, budget cuts, and hiring and spending freezes. At the same time, the Department received thousands more discrimination complaints from unemployed and displaced Californians.

To meet these challenges, the DFEH adopted the motto, "to SOAR as the nation's top civil rights agency." "SOAR" stands for "service," "outreach," "advocacy," and "resource."

On service, the Department implemented several systems that are user-friendly and cost effective. Using available technology, the DFEH created an automated online appointment system for anyone seeking to file employment discrimination complaints, and a right-to-sue system to exhaust administrative remedies for persons already represented by counsel. The DFEH consolidated offices from ten to six geographical locations, cutting hundreds of thousands of dollars in rent and saving employees' jobs. At the same time, the Department expanded its telephone intake services to almost daily. The Department also launched a critical case grading system to better triage and match resources to case investigations. An experienced attorney now heads up the Department's Enforcement Division and its re-established Special Investigations Unit. The DFEH has further hired legal analysts to work alongside investigators. As a result, productivity has doubled, quality has improved, and the Department returned nearly \$1 million in savings to the General Fund in the past fiscal year.

As to outreach, in 2009, the DFEH set out to commemorate the 50th anniversary of the FEHA with a year-long, statewide, outreach program that involved 160 collaborations and 200 events. The anniversary kicked off with

a proclamation designating January 2009 Fair Employment and Housing Month. A Capitol press conference was held to honor civil rights advocates. Using small grants from the Equal Employment Opportunity Commission and the State Bar Labor & Employment Law Section, the DFEH also produced a number of outreach videos on the FEHA's 50th anniversary as well as on employment, housing and hate crime. These videos, along with lesson plans and other materials, inform young people about their rights and responsibilities in the workplace and in housing. In addition, the Department launched social networking pages such as Facebook, YouTube and Twitter to publicize its services.

On advocacy, the Department increased its productivity and achieved better results as the number of prosecutions and settlements grew to more than \$9 million in each of the past three fiscal years. Using its case grading system and Special Investigations Unit, as well as filing Director's and class/group complaints, the Department now regularly develops cases to address systemic discrimination. The DFEH recently settled several class/group actions on pregnancy, disability and family leave. The most significant settlement is an historic \$6,011,190 California Family Rights Act (CFRA) case against Verizon. The settlement provides three tiers of damages for more than 1,000 current and former

continued on page 35

A Phoenix Rises

continued from page 33

California employees in Verizon's voice, data and video operations. The lawsuit was precipitated by a more than two-year-long investigation into Verizon's family leave practices, which alleges that Verizon denied or failed to timely approve class members' requests for leave for their own serious health condition, to care for a family member with a serious health condition, or to bond with a new child. Settlement of the lawsuit, equivalent to an entire year of DFEH Enforcement Division settlements, is the largest in DFEH history. Verizon also agreed to review and revise its leave policies and procedures, continue an existing internal review process that employees can invoke

to appeal denials, train all California officers, managers, supervisors and human resources personnel on the procedures and submit regular updates to the DFEH regarding the company's compliance. In settling, Verizon did not admit to liability. The settlement is subject to final court approval after class claims are filed. More systemic discrimination DFEH investigations and class/group complaints of this type are in development.

As to resource, the DFEH established its first-ever in-house Mediation Division, which along with volunteer mediators, expanded settlement services by 100 percent. These free mediation services save businesses significant expenses by helping them settle cases out of court.

The Department further sponsored Senate Bill 1252 (Corbett) to make technical amendments to the housing provisions under the FEHA. It is promulgating its first procedural regulations to streamline

its complaint processing. The DFEH also worked with the UCLA-RAND Center for Law and Public Policy to conduct a 2009 policy study of the FEHA's achievements. These findings were presented as testimony before the Senate and Assembly Judiciary Committees' Oversight Hearing. Other resources to the community include spearheading the first fair housing and public accommodations entity at the State Bar of California; contributing to legal practice guides; and providing a free case law alert to the legal and human resources community. In addition, the DFEH is hosting monthly webinars for State agencies and looks forward to future offerings to the legal community.

Like the phoenix then, the Department has risen from the budgetary ashes to lead a civil rights renaissance. By embracing the budget crisis as a vehicle for innovation, so too can other governmental agencies. 42