

## DFEH UPDATE: How the DFEH Manages to Soar in the Age of Austerity

By Phyllis W. Cheng

The Department of Fair Employment and Housing ("Department" or "DFEH") is charged with enforcing the Fair Employment and Housing Act ("FEHA"),<sup>1</sup> Unruh Civil Rights Act,<sup>2</sup> Ralph Civil Rights Act<sup>3</sup> and Disabled Persons Act.<sup>4</sup> It takes in, investigates, conciliates, mediates and prosecutes about 20,000 discrimination, harassment and retaliation complaints per year.

Over the past 31 years, the Department operated under long-established procedures to carry out its mission. However, business-as-usual ended with the State's mounting multi-billion dollar budget deficits, which triggered multiple furloughs from 2009 to 2011, budget cuts of approximately 16 percent, and freezes on hiring and spending. At the same time, the DFEH 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."

For "service," the Department implemented several systems that are user-friendly and cost effective. Using available technology, the DFEH created automated online appointment and right-to-sue systems to exhaust administrative remedies for persons already represented by counsel. The DFEH gradually consolidated offices from ten to five, cutting hundreds of thousands of dollars in rent, saving employees' jobs and promoting deserving staff. At the same time, the Department expanded its telephone intake services to operate almost daily. The DFEH also launched a critical case grading system to better triage and match resources to case investigations. For the first time, an attorney manager heads up the Department's Enforcement Division and its re-established Special Investigations Unit, and additional legal analysts have been hired to work alongside investigators. As a result, productivity has increased, such that fewer cases are opened at any

one time. Moreover, through these efficiencies, the Department has regularly returned six to seven figures in savings to California's treasury to help defray the budget deficit.

As to "outreach," the DFEH has collaborated with stakeholders to expand training statewide to more than 500 in-person or web events since 2008. Using small grants from the United States Equal Employment Opportunity Commission ("EEOC") and the State Bar of California's Labor & Employment Law Section, the DFEH also produced a number of outreach videos in multiple languages, covering topics such as: employment discrimination; housing discrimination; public accommodations; hate violence; how the Department handles a case from intake to decision; the FEHA's 50th anniversary; and the DFEH's accomplishments. The DFEH distributed many of these videos, along with lesson plans and other materials, to every California public high school. In addition, the Department launched social networking pages such as Facebook, YouTube, LinkedIn and Twitter to publicize its services.

On "advocacy," the Department has increased its productivity and has achieved better results. Settlements nearly doubled from \$7.2 million in 2009 to \$13.1 million in 2011. Quality has improved, such that Director's complaints and class and group actions that address systemic discrimination are now routinely prosecuted. The DFEH recently settled several class/group actions on pregnancy, disability and family leave, the most significant of which was a historic \$6,011,190 settlement with Verizon for family leave (California Family Rights Act ("CFRA"))<sup>5</sup> violations. This settlement – approved by the Los Angeles County Superior Court in January 2012 – provides three tiers of damages for nearly 1,000 current and former 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, leading to allegations that Verizon denied or failed to timely approve class members' requests for leave for their own serious health conditions,

<sup>1</sup> Cal. Gov't Code § 12900 et seq.

<sup>2</sup> Cal. Civ. Code § 51(a).

<sup>3</sup> Cal. Civ. Code § 51.7.

<sup>4</sup> Cal. Civ. Code § 54 et seq.

<sup>5</sup> Cal. Gov't Code §§ 12945.2, 19702.3.

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. More systemic discrimination investigations and class/group complaints of this type are in progress.

As to "resource," the DFEH established its first-ever in-house Mediation Division, which along with volunteer mediators, has expanded settlement services by 100 percent. In its first full year of operation, the Mediation Division settled \$2.6 million worth of cases. These free mediation services save both victims and businesses significant expenses by helping them settle cases out of court, while improving employment and housing practices. The Department further sponsored legislation, California Senate Bill 1252 (Corbett),<sup>6</sup> which was enacted in 2010, to make technical amendments to the housing provisions under the FEHA. The DFEH further promulgated its first procedural regulations to streamline complaint processing. The Department also worked with the UCLA-RAND Center for Law and Public Policy to conduct a 50th anniversary retrospective study of the FEHA's achievements. These findings were presented

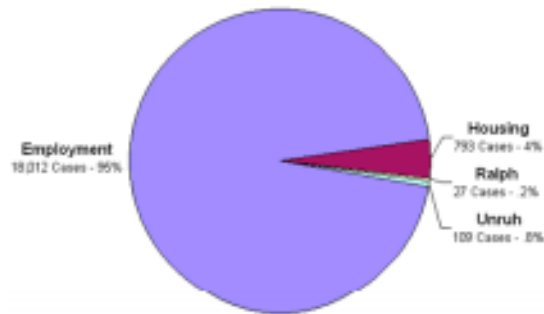
as testimony before an oversight hearing of the California Senate and Assembly Judiciary Committees. Other resources to the community include spearheading the first fair housing and public accommodations entity at the State Bar of California; contributing to legal practice guides; and providing a free case law alert to the legal and human resources community. In addition, the DFEH hosted monthly webinars for State agencies, and looks forward to expanding such webinars as a Mandatory Continuing Legal Education ("MCLE") and HR Certification Institute ("HRCI") provider to the legal and human resources communities.

Like the mythical phoenix, the Department has managed to soar from the budgetary ashes to lead a civil rights renaissance in California. Other governmental agencies, too, can embrace the fiscal crisis as a vehicle for innovation.

*Phyllis Cheng is the Director of the Department of Fair Employment and Housing, a role she has held since 2008. Prior to that, Ms. Cheng served as Of Counsel for Littler Mendelson P.C., a research attorney for Associate Justice Laurie D. Zelon, Deputy Attorney General in the Civil Rights Enforcement Section of the California Department of Justice, an arbitrator, a mediator, a settlement officer, an appellate counsel, Commissioner and Vice Chair of the Fair Employment and Housing Commission, and a private practitioner, among other roles. Ms. Cheng recently joined the Editorial Board of the Bulletin.*

<sup>6</sup> S.B. 1252, 2009-2010 Leg. Sess. (Cal. Sept. 29, 2010).

**California Department of Fair Employment and Housing**  
Calendar Year: 2011  
Cases Filed: by Law (18,941 Cases)



**California Department of Fair Employment and Housing**  
Calendar Year: 2011  
Cases Filed: by Bases (18,012 Employment Cases)

