

SENATE OFFICE OF OVERSIGHT AND OUTCOMES

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Underfunded Civil Rights Agency Fails to Enforce Discrimination Law, Bows to Secret Policy on Public Workers

SACRAMENTO – Budget cuts have starved the state Department of Fair Employment and Housing, while a series of flawed policy decisions further weaken its role as California’s civil rights agency, according to a report released today by the Senate Office of Oversight and Outcomes.

The report concludes that dwindling resources have curbed the department’s ability to properly investigate discrimination claims. The Senate Oversight Office also uncovered a secret policy that allows the governor to veto cases against public agencies without explanation or public disclosure. The report documents DFEH’s mishandling of a multimillion-dollar federal fair-housing contract. And it details other policies that have lead to incoherent written complaints, plummeting staff morale, and a training program that does not pass legal muster.

The report, *Department of Fair Employment and Housing: Underfunding and Misguided Policies Compromise Civil Rights Mission*, is available [here](#) and on the website of the Senate Oversight Office, www.sen.ca.gov/oversight.

For many of the 18 million working people in California, the only recourse in the face of job discrimination is the Department of Fair Employment and Housing. DFEH fields more than 20,000 complaints a year. It is a herculean task for a small department.

“There is a wide gap between the promise of the Fair Employment and Housing Act – considered the strongest anti-discrimination statute in the nation – and the ability of DFEH to process and investigate the thousands of claims it receives while under constant budget cuts,” the report states.

The report’s overarching finding is that the department is critically underfunded. In the five years between 2007 and 2012, DFEH’s budget was cut by 11 percent as the number of cases increased by 16 percent. Money problems triggered mass office closings,

ballooning caseloads for investigators, and a frustrating lack of service for both claimants and their employers.

One of the report's most significant findings has little to do with money, however. It uncovers a secret policy that gives the Governor's Office the authority to decide whether the department will pursue discrimination cases against other government agencies – state or local.

“This constitutes unequal treatment for public employees, creates a potential for abuse, and compromises DFEH's statutory independence,” according to the report. “Taken to its extreme, it allows a California governor, in effect, to exempt public agencies from the state's anti-discrimination law.”

Legal experts characterized this hidden procedure as “dishonest” and a likely violation of the fair employment law. Before the policy took effect in 2008, Senate investigators learned, public agencies accounted for 15 percent of the department's formal enforcement actions. That dropped to just 1 percent last year. Neither DFEH nor the Governor's Office would comment on the reason for the policy, citing attorney-client and other legal privileges.

The report covers a number of other issues. It shows how the department jeopardized a critical contract with the federal Department of Housing and Urban Development. It examines policies that create barriers for non-English speakers and result in incoherent complaints being served on perplexed employers. Finally, it scrutinizes the department's sexual-harassment prevention webinars, which were presented to 10,000 state workers but failed to comply with the law or DFEH's own regulations.

Despite these problems, the report notes that DFEH has made strides to modernize and to save taxpayer dollars during difficult budget times, placing new emphasis on class actions and mediation. Recent statutory changes that allow DFEH to take cases to civil court and to collect lawyers' fees also hold promise for the department.

Among the report's recommendations:

- ✓ The Legislature should either budget sufficient resources to support the lofty mandates of the Fair Employment and Housing Act – or amend the law to reflect a more modest mission. A task force should be convened to determine the proper cost of funding the law and possible changes to its structure.
- ✓ DFEH should end the secret practice of allowing the Governor's Office to dictate whether a case against a public agency is pursued.
- ✓ The Legislature should monitor the progress of the department's restoration of its fair-housing contract with the federal government.
- ✓ The department should address the serious shortcomings in its investigations of employment discrimination, taking a hard look at possible causes: a new computer system, heavy caseloads, or misguided policy decisions.

- ✓ The department should revisit changes that result in incoherent complaints being served on employers.
- ✓ Sexual-harassment webinars must be revamped to meet all statutory and regulatory requirements.

The non-partisan Office of Oversight and Outcomes was created in 2008 by Senate President pro Tempore Darrell Steinberg (D-Sacramento) to bolster the Senate's ability to assess government performance.