

Overview of the DFEH and the DFEH Legal Division

Los Angeles County Commission on HIV
HIV-Based Discrimination—Law and Remedies
September 8, 2016



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Objectives

1. Understand the Laws DFEH Enforces
2. Understand the DFEH and its processes
 - a. Enforcement Division
 - b. Legal Division
3. Director's Complaints



DFEH Mission

- The Department of Fair Employment and Housing (DFEH) is California's civil rights agency.
- Mission: The Department of Fair Employment and Housing's mission is to protect Californians from employment, housing & public accommodation discrimination and hate violence.
- The DFEH receives, investigates, conciliates, mediates, and prosecutes complaints in employment, housing and public accommodations throughout the State of California.



Jurisdiction

- Fair Employment and Housing Act (Gov. Code, § 12900 et seq.).
 - California Family Rights Act (CFRA)
 - Pregnancy Disability Leave (PDL)
- Unruh Civil Rights Act (Civ. Code, § 51 et seq.).
- Disabled Persons Act (Civ. Code, § 54 et seq.).
- Ralph Civil Rights Act (Civ. Code, § 51.7).



Overview of Legal Division's Process

- Complaint filed
 - Director's Complaint*
 - Individual
 - Group or Class
 - Systemic
- Investigation
 - Case Grading 1, 2, 3 star cases
 - Legal assists with investigation in 2-3 star cases and Director's complaints
- Refer to Legal
 - Mandatory SB 1038 Mediation
 - Prosecutorial discretion
- File Civil Lawsuit Complaint on behalf of DFEH
 - Complainant is Real Party in Interest



Legal Division-Statewide

Los Angeles & Elk Grove (Sacto)

- Chief Counsel (1)
- Associate Chief Counsel (2)
- Assistant Chief Counsel (2)
- Senior Staff Counsel (5)
- Staff Counsel (9)
- Honors Fellows/Graduate Legal Assistants (5) – one year post law school fellowship
- Legal Interns/Externs



Employment Discrimination under the FEHA

- The opportunity to seek, obtain, and hold employment without discrimination is a civil right. (Gov. Code, § 12921, subd. (a).)
- An employer may not “refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment” or to “fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.” (Gov. Code, § 12940, subds. (a)-(k).)



Protected Bases Under the FEHA

1. Race
2. Color
3. National Origin
4. Sex
5. Sexual Orientation
6. Gender
7. Gender Identity
8. Gender Expression
9. Religious Creed
10. Mental Disability
11. Physical Disability, includes HIV/AIDS
12. Medical Condition
13. Military/Veteran Status
14. Marital Status
15. Age
16. Genetic Characteristic
17. Ancestry

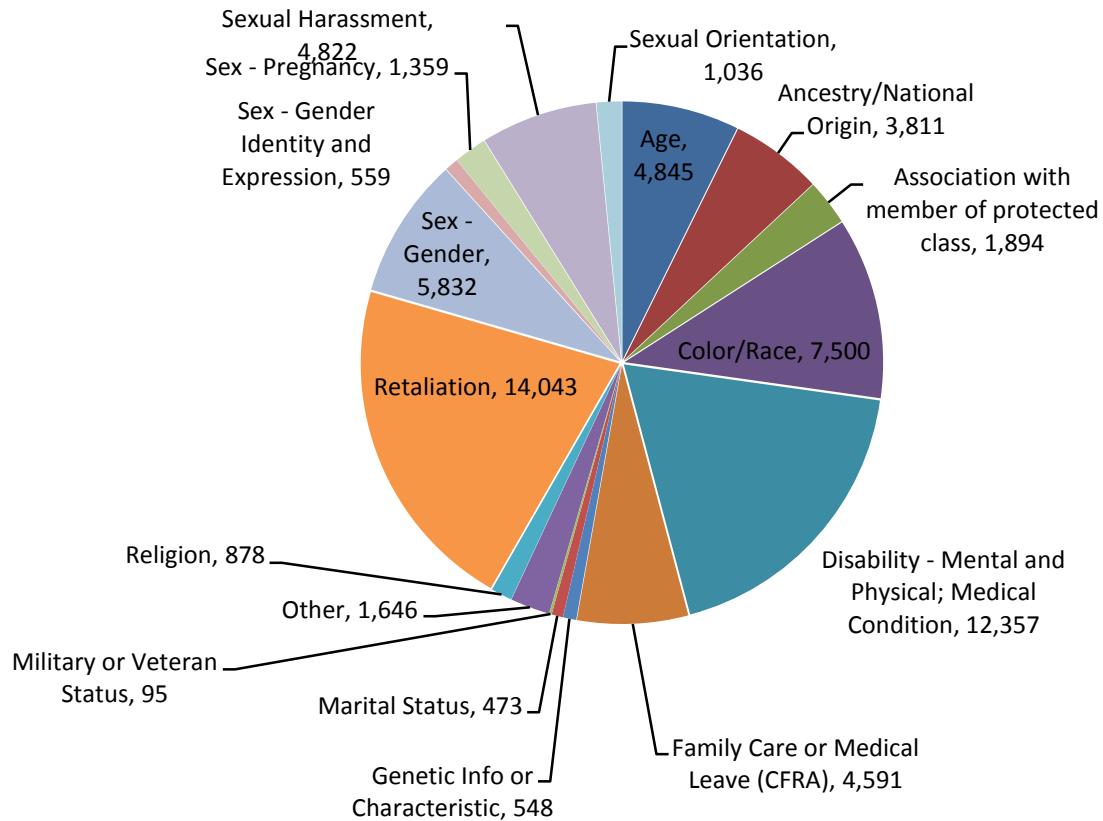


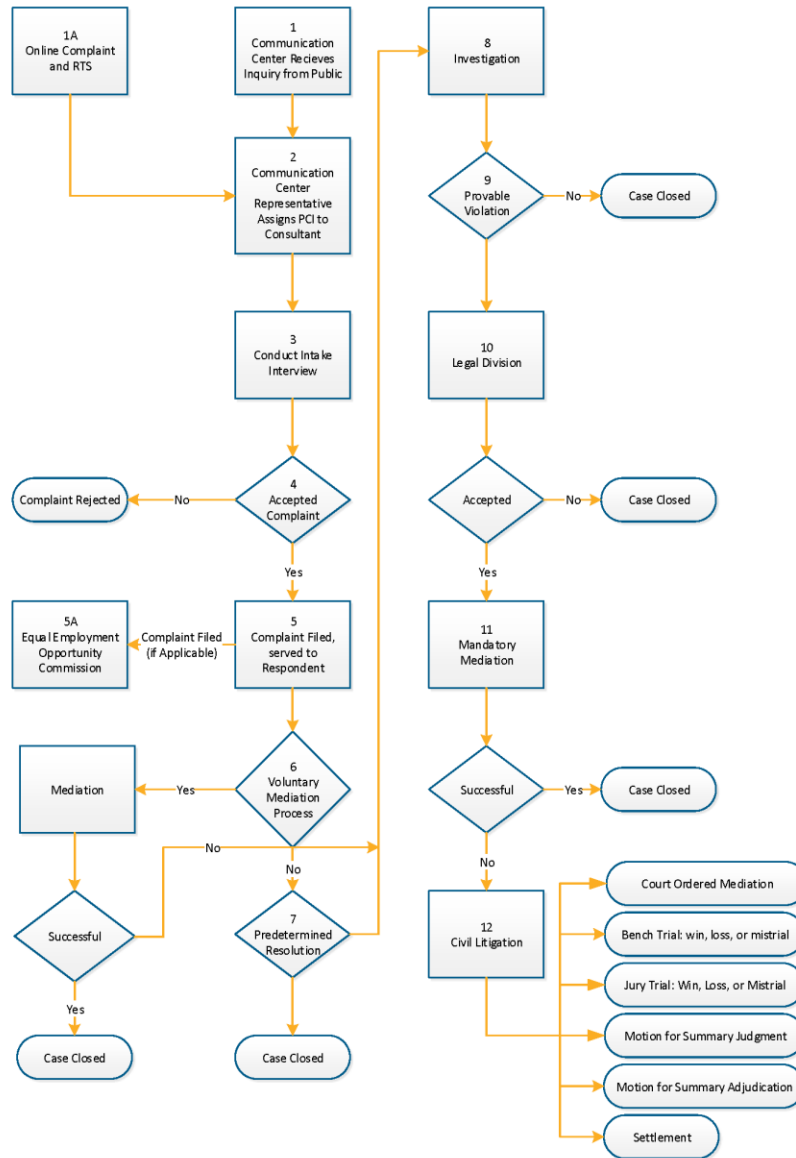
Protected Bases Under the FEHA

1. Race
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3. National Origin
4. Sex
5. Sexual Orientation
6. Gender
7. Gender Identity
8. Gender Expression
9. Religious Creed
10. Mental Disability
11. Physical Disability, includes HIV/AIDS
12. Medical Condition
13. Military/Veteran Status
14. Marital Status
15. Age
16. Genetic Characteristic
17. Ancestry



Employment Cases Filed with the DFEH in 2015 (total: 20,505)





Administrative Complaint and Discovery

Case Grading – Joint Enforcement and Legal Determination of Cause Finding

Tolling Agreement

SB 1038 mediation

Real party in interest rather than Client



Housing Discrimination Under FEHA

The opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, genetic information, or any other basis prohibited by Section 51 of the Civil Code is hereby recognized as and declared to be a civil right. (Govt. 12921 (b))

For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, status, source of income, disability, or genetic information that person. (Govt Code § 12955(a))



Protected Bases Under FEHA in Housing

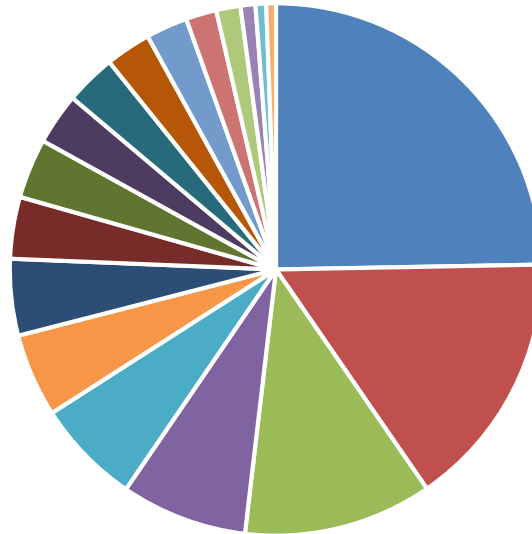
1. Race
2. Color
3. Religion
4. Sex
5. Gender
6. Gender Identity
7. Gender Expression
8. Sexual Orientation
9. Marital Status
10. National Origin
11. Ancestry
12. **Familial Status**
13. **Source Of Income**
14. Disability
15. Genetic Information
16. **Any other basis prohibited by Section 51 of the Civil Code (Unruh)**

Protected Bases Under Unruh*

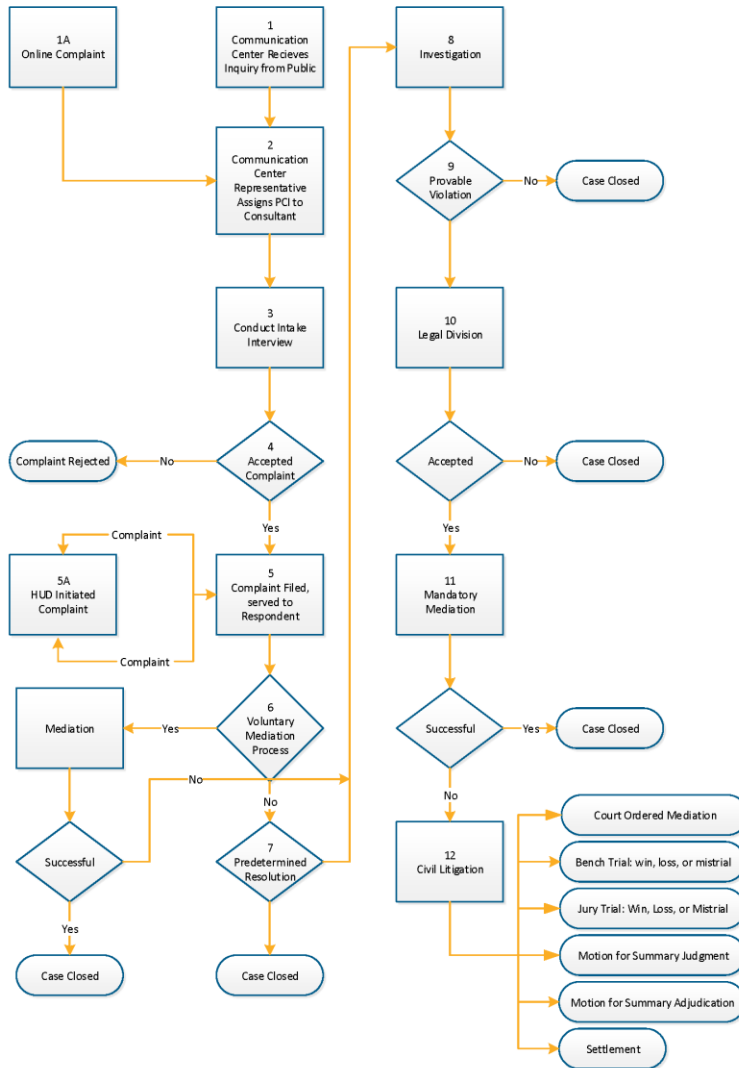
1. Age
2. Ancestry
3. Color
4. Disability
5. Genetic Information
6. Medical Condition (cancer and genetic characteristics)
7. Marital Status
8. National Origin
9. Race
10. Religion
11. Sex (which includes pregnancy, childbirth, medical conditions related to pregnancy or childbirth, gender, gender identity and gender expression)
12. Sexual Orientation
13. Citizenship
14. Primary Language
15. Immigration Status

*The Act is meant to cover all arbitrary and intentional discrimination by a business establishment on the bases of personal characteristics similar to those listed above.

Housing Cases Filed with the DFEH in 2015 (Total 2529)



- Disability - Mental and Physical
- Race
- Source of Income
- Sex - Gender
- Age - 40 or over
- Association with a member of a protected class
- Sexual Orientation
- Ancestry
- Sex - Gender Identity or Expression
- Retaliation
- Familial Status (Children)
- Color
- National Origin
- Sexual Harassment
- Marital Status
- Religion
- Genetic Information
- Sex - Pregnancy



Administrative Complaint and Discovery

No exhaustion of administrative remedies

Case Grading – Joint Enforcement and Legal Determination of Cause Finding

Tolling Agreement

SB 1038 mediation

Real party in interest rather than Client



Los Angeles County Complaints Filed 2015

Employment 6,157

Housing 374

Ralph 10

Unruh 40

Disabled Persons Act 9



Referred to Legal/Civil Complaints – Statewide 2015

Employment	73	27
Housing	50	17
Ralph	1	1
Unruh	6	1
Disabled Persons Act	0	



Recent Developments and New Items

- New DFEH resource for reasonable accommodation/interactive process at <http://www.dfeh.ca.gov/RAEmployment.htm>
- 2015 Annual Report is available at www.dfeh.ca.gov
- Workplace Rights for Members of the Military and Veterans factsheet
- Equal Pay Act – Labor Code section 1197.5 factsheet
- Your Rights and Obligations as a Pregnant Employee factsheet
- Transgender Rights factsheet



THANK YOU

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