

California's DFEH report highlights coming discrimination trends

The California Department of Fair Employment and Housing (DFEH), California's civil rights agency, submits an annual report each calendar year to the governor and the state legislature. The latest report shows growing trends toward more filings related to disability, race and gender-based discrimination.

The mission of the DFEH is to protect Californians from discrimination in employment, housing and public accommodation, as well as hate violence. The Department enforces the Fair Employment and Housing Act (FEHA), the Unruh Civil Rights Act, and the Ralph Civil Rights Act.

In 2012, there were 21,463 cases filed with the DFEH; 92% of those cases or 19,839 were employment law cases. The majority of the DFEH cases were for:

1. Disability discrimination (13,452)
2. Race/color discrimination (6,990)
3. Sexual harassment (6,169).

According to Council for Disability Awareness's 2013 "Long Term Disability Claims Review," the following were the leading causes of new disability claims in 2012:

- Musculoskeletal/connective tissue disorders (28.5%)
- Cancer (14.6%)
- Injuries and poisoning (10.6%)
- Mental disorders (8.9%)
- Cardiovascular/circulatory disorders (8.2%)

Note: One in four adults—approximately 61.5 million Americans—experience mental illness in a given year. One in 17—about 13.6 million—live with a serious mental illness such as schizophrenia, major depression or bipolar disorder.

Emerging trends for 2014

Trending in 2014 is an expected increase in discrimination cases based on gender, gender identity and gender expression. Those categories were the subject of additions to the protected classes covered by FEHA and amendments to several sections of the California Government Code and the state's Unruh Civil Rights Act.

Also trending is an expected increase in cases brought under the California Family Rights Act and Pregnancy Disability Leave laws, following the amendment of Government Code sections 12945 and 12945.2.

Dispute resolution now required

Further expected is an increase in cases mediated through the DFEH and settled through mediation. In 2012, nearly 15% of cases were settled through DFEH mediation.

New in 2013 for the DFEH was the case of failure to eliminate an unlawful employment practice through conference, conciliation, mediation or persuasion.

Before filing a civil action in court, DFEH requires the parties to participate in dispute resolution via the DFEH's Dispute Resolution Division. Dispute resolution is now mandatory for all cases in which DFEH intends to file a civil action. DFEH's dispute resolution services has an 80% settlement rate.

The DFEH may bring a civil action on behalf of the person claiming to be aggrieved. There are no caps on damages plaintiffs may recover in court (unlike the caps on damages regarding claims brought to the Fair Employment Housing Commission). Claims are no longer brought before the Fair Employment Housing Commission.

If the DFEH prevails, it is authorized to obtain reasonable attorneys' fees and costs, including expert witness fees. The DFEH will use \$170 per hour rate as its fee basis (this is the Attorney General's hourly rate as well).

EEOC enforcement efforts pay off--for employees

The EEOC finished fiscal year 2013 with record high monetary recoveries for victims of discrimination, as well as a significant decrease in the number of pending cases, according to the EEOC's Performance and Accountability Report.

Under the commission's new strategic law enforcement regime, the EEOC secured monetary recovery through private-sector administrative enforcement—\$372.1 million—the highest level of monetary relief ever. Administrative enforcement includes mediation, settlements, withdrawals with benefits and conciliation. Approximately 10% of this amount—\$37 million—came from investigations and conciliations of systemic charges of discrimination, four times the amount received in the previous fiscal year.

Additionally, the EEOC recovered \$39 million through its litigation program, as well as securing injunctive relief against discriminatory practices affecting a large number of employees. Overall, there were 131 lawsuits on the merits filed by EEOC offices nationwide.

For the third consecutive year, the EEOC received nearly 100,000 charges of discrimination—93,727 charges in fiscal year 2013, 6,000 fewer than in 2012.

In 2012, California came in third among states with the highest number of EEOC charges received—7,399 in all. Texas was No. 1 with 8,929. Florida was No. 2 with 7,940.

The majority of the EEOC filed cases were

1. Retaliation—all statutes (38% or 37,836)
2. Race discrimination (33.7% or 33,512)
3. Sexual discrimination (30.5% or 30,356).

From 2011 to 2012, the biggest percentage increase in claims were for disability discrimination, sex discrimination and retaliation.