

REPORT ON THE STATUS OF THE STATE DISCRIMINATION COMPLAINT PROCESS

I. PURPOSE OF THE REPORT

Government Code Section 19702.5(c) requires the State Personnel Board (SPB) to hold a public hearing once every three years to assess the effectiveness, accessibility, and fairness of the state discrimination complaint process. The SPB is further required to report the results of the hearing, with recommendations for improving the process, to the Legislature within 90 days. To develop the information needed for the hearing, staff conducted a comprehensive review of departmental discrimination complaint policies and procedures, and has prepared this report on its findings and recommendations.

II. SUMMARY OF MAJOR FINDINGS:

The state's discrimination complaint process is sound in principle, but its implementation by some departments is inconsistent and incomplete. Improvements are needed at the departmental level to better assure effectiveness, accessibility and fairness. In addition, the SPB needs to provide better guidelines and training to departmental staff to improve their ability to effectively carry out the process. These conclusions are based on the following major findings of this report:

- In calendar year 2000¹, state departments reported receiving 676 discrimination complaints filed by individuals, in which 1,103 multiple charges of discrimination were made. In addition, departments reported that employees filed 328 complaints with the Department of Fair Employment and Housing (DFEH), and 210 with the U.S. Equal Employment Opportunity Commission (EEOC). (See Table on pages 49-51)
- The greatest number of departmental discrimination complaints were received for Retaliation, 214 (19.4%); Sexual Harassment, 188 (17.0%); and Race, 182 (16.5%). (See page 10)
- In calendar year 2000, 592 individual discrimination complaints were closed. Of those, departments made a specific finding in 355 (60.0%) and found discrimination had occurred in 54 (15.2%) cases. (See page 23)

¹ Calendar year 2000 is the last year for which there is complete information on discrimination complaints.

- In 2000, the SPB closed 136 appeals by employees of departmental decisions on their discrimination complaints. Of these, the SPB decided 55 cases (40.4%). Five of these appeals (8.6%) were granted by the SPB, 23 (39.7%) were settled by stipulation, and 27 (19.8%) were denied/dismissed. Other cases closed but not decided by the SPB included 42 (30.0%) that were withdrawn by the appellant; and 39 (28.7%) that were not accepted due to no grounds established, the SPB had no jurisdiction or the appeal was not timely. (See page 46)
- Departments are currently not tracking the amount of resources and the costs to respond to discrimination complaints. Partial information that the SPB was able to obtain from departments indicates that the cost in 1999-2000 was in excess of \$36.9 million. (See page 47)

- 40.6% of state employees surveyed indicated that they have confidence that their department treats discrimination complaints fairly. (Source: Employee Questionnaire on the Departmental Discrimination Complaint Process, question number 16)
- 57.3% of the departments surveyed indicated that their current director had issued a non-discrimination policy statement to departmental employees. (See page 16)
- 60.7% of the departments surveyed had issued written discrimination complaint procedures to their employees. (See page 25)
- 53.9% of the departments said they had an active informal discrimination complaint process to try to resolve complaints at the lowest level, with the least formality. (See page 26)
- Departments reported 924 informal complaints. Of those, 635 (68.7%) were resolved through the informal process. (Source: Departmental Discrimination Complaint Questionnaire, question numbers 49-65)
- 48.3% of departments had offered mediation to employees as a method for resolving complaints. Departments reported 121 employees accepted mediation and 70 complaints (57.9%) were resolved through the process. (Source: Departmental Discrimination Complaint Questionnaire, question numbers 42-44)
- 66.3% of departmental Equal Employment Opportunity (EEO) officers report to the directorate. The classification level of EEO officer positions range from staff services analyst to exempt. (See page 19)
- Overall, 51.0% of departmental investigations of discrimination complaints that were reviewed by staff appeared to be fully impartial and thorough, and the findings sound; 29.0% were found to have minor problems, and 20.0% had serious problems. (See page 33)
- 37.0% of departmental discrimination complaint files were found to be complete; 43.0% were missing minor items; and 20.0% were missing major items. (See page 35)
- Many gaps and errors were found in discrimination complaint information reported to the SPB by departments. Some of the reasons appear to be inadequate tracking systems, insufficient resources/staff, departmental staff turnover, insufficient training, and lack of attention to the importance of the information. (See page 42)
- Seventy-six percent of the departments surveyed have provided some employment law training to supervisors and managers within the last three years. (See pages 21 and 22)
- Sixty-six departments (74.2%) indicated that all their EEO investigators had completed the SPB's EEO Investigator Training Course or similar training, and 58 departments (65.2%) indicated that all their EEO counselors had completed the SPB's EEO Counselor Training Course or similar training. (See pages 31 and 32)
- The training of departmental EEO office staff, and EEO counselors and investigators in employment and civil rights law, and in procedural requirements, is not uniform or consistent among all departments. (See pages 28, 29, 31 and 32)
- Of departments surveyed, 85.3% indicated that they had provided sexual harassment training to all their managers and supervisors within the last three years, and 47.7% had provided reasonable accommodation training. (See page 22)
- In calendar years 1999 and 2000, 39 (28.7%) and 69 (43.9%) appeals of departmental decisions on discrimination complaints submitted to SPB, respectively, were rejected because appellants were not

able to establish proper grounds for appeal, the SPB had no jurisdiction, or the appeal was not timely. (See page 46)

- In 2000, the average number of days to close an SPB discrimination complaint appeal was 163 days; however, the average number of days to close reasonable accommodation appeals was 247 days. (See page 45)

- On-site reviews of departmental discrimination complaint processes motivated some departments to review and update their discrimination complaint processes without being required to do so by the SPB.

III. SUMMARY OF SPECIFIC RECOMMENDATIONS

The recommendations to improve the state's discrimination process are listed below. Recommendations are numbered in the order that they appear in this report. The discussion of the facts leading to each recommendation is located on the page indicated in parenthesis.

1. The SPB develop a regulation requiring departments to issue written non-discrimination policy statements to all their employees when first employed and at least once every three years thereafter. (Coordinate with recommendations #2 and #32. (See pages 16 and 17)
2. Departments include definitions of the protected categories in their non-discrimination policy statements. (Coordinate with recommendations #1 and #32. (See pages 17 and 18)
3. The SPB issue a reminder to departments of their legal obligation to display prominently the DFEH non-discrimination poster and to call employees' attention to it. (See page 18)
4. The SPB develop and distribute a poster informing state employees about the state discrimination complaint process and an employee's right to appeal to the SPB. (See page 18)
5. The SPB propose new legislation requiring that each appointing authority appoint an EEO officer who reports directly to the departmental director or chief deputy director and be independent of human resources and line programs. (See pages 18-20)
6. The SPB propose new legislation to specify that the EEO officer is responsible for managing the departmental discrimination complaint process. (See pages 18-20)
7. The SPB, in cooperation with the California Civil Rights Officers Council (CCROC) and the Department of Personnel Administration, review EEO officer positions to determine the appropriate classification level. (See pages 18-20)
8. The SPB promulgate a regulation requiring departments to have at least one trained reasonable accommodation coordinator. (See pages 20 and 21)
9. Departments ensure that their reasonable accommodation coordinators receive training on the reasonable accommodation provisions of both the

Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA). (See pages 20 and 21)

10. The SPB form a task force to explore the development of a new comprehensive basic EEO/non-discrimination law training program for state managers and supervisors. (See pages 21 and 22)
11. The SPB follow-up with departments in 13 cases where discrimination was found to determine why no action was taken against the responsible party. (See page 23)
12. The SPB revise its quarterly discrimination complaint data collection process to require departments to explain the reason why no action is taken in cases where discrimination is found. (Coordinate with recommendation #33.) (See pages 23)
13. The SPB promulgate a new regulation requiring departments to have written discrimination complaint procedures. (Coordinate with recommendations #14, #15, and #16) (See pages 24 and 25)
14. The SPB develop a model written discrimination complaint procedure identifying essential elements that should be included in an effective procedure. (Coordinate with recommendations #13, #15, and #16) (See pages 24 and 25)
15. The SPB review and approve current written departmental discrimination complaint procedures and subsequent revisions. (Coordinate with recommendations #13, #14, and #16) (See pages 24 and 25)
16. The SPB promulgate a new regulation requiring departments to provide a copy of their discrimination complaint procedures to all new employees and to reissue the procedures to all employees every three years and to place their procedures on the departmental Web site. (Coordinate with recommendations #13, #14, and #15) (See pages 25 and 26)
17. The SPB revise Regulation 54.2 to clarify and strengthen the requirement that departments have an effective informal discrimination complaint process. (See pages 26 and 27)
18. Departments provide their employees with information on how to use the informal discrimination complaint process by complying with the new regulations proposed in recommendations #16 and #22. (See page 27)
19. The SPB develop criteria to assist departments in determining whether they have an adequate number of EEO counselors. (See page 27 and 28)
20. The SPB develop a regulation requiring that all EEO counselors be trained before being assigned counseling duties, and that they undergo refresher training every three years. (See pages 28 and 29)
21. The SPB revise its EEO counselor training to provide greater emphasis on practical counseling and interviewing techniques. (See pages 28 and 29)
22. The SPB develop a regulation requiring departments to prominently post the names and telephone numbers of their EEO counselors, distribute a written list

of counselors to all employees, and post the list in a prominent place and/or on the departmental Web site. (Coordinate with recommendations #16 and #18) (See pages 29 and 30)

23. Departments provide all their employees with a written description of the functions and services of their EEO office and the names and telephone numbers of the departmental EEO officer and staff. (See page 30)
24. The SPB develop criteria to assist departments in determining whether they have an adequate number of EEO investigators. (See pages 30 and 31)
25. The SPB develop a regulation requiring that all EEO Investigators be trained before being assigned investigative duties and that they undergo refresher training every three years. (See pages 31 and 32)
26. The SPB revise its technical investigator training class to provide more emphasis on the practical aspects of conducting an investigation, including steps in the investigative process, interviewing techniques, and report writing. (See pages 31 and 32)
27. The SPB, in cooperation with departmental EEO officers, explore how small departments can most effectively obtain needed resources to investigate discrimination complaints. (See pages 31 and 32)
28. The SPB develop a regulation that sets forth the standards for opening and closing out a discrimination complaint investigation. (See pages 32-34)
29. The SPB revise its regulations to include a time limit of 180 days for a department to complete a discrimination complaint investigation and issue a decision before an employee can appeal directly to the SPB.
(See pages 34 and 35)
30. SPB work with departments to develop guidelines on who may have access to departmental discrimination complainant files during and following investigations of complaints. (See page 35)
31. Departments organize and maintain their discrimination complaint files in accordance with SPB's EEO investigator training guidelines. (See pages 35 and 36)
32. The SPB develop a regulation requiring departments to develop and distribute a policy statement prohibiting retaliation for use in the discrimination complaint process. (Coordinate with recommendations #1 and #2.) (See page 36 and 37)
33. The SPB implement recommendation #12 in order to more fully monitor actions/no action taken against those found by departments to have retaliated against another employee. (See page 37)

34. The SPB review its technical training course on reasonable accommodation to determine how it might be improved. The SPB should consider input from departmental EEO staff and reasonable accommodation coordinators for improving the course. (See pages 37 and 38)
35. The SPB promulgate a regulation requiring that departments issue written reasonable accommodation procedures to all their employees.
(See page 38)
36. The SPB require departments to include a provision for the interactive process, including who has responsibility for initiating the process, in their departmental reasonable accommodation procedures. (Coordinate with recommendations #37 and #39) (See pages 38 and 39)
37. The SPB revise and reissue to departments its booklet *Guide to Implementing Reasonable Accommodation* and include information about the requirement for the interactive process. (Coordinate with recommendations #36 and #39) (See pages 38 and 39)
38. The SPB revise Regulation 53.2 requiring departments to provide the employee with a final decision on his/her request within 20 working days after receiving medical information from the employee's licensed health care practitioner. (See pages 39 and 40)
39. In implementing the statutory requirement for an interactive process, departments ensure they keep employees informed about the status of their reasonable accommodation requests. (Coordinate with recommendations #36 and #37) (See page 40)
40. Departments ensure their written reasonable accommodation procedures include a provision for providing employees their appeal rights. (See page 40 and 41)
41. The SPB revise Regulation 53.2 to require that the EEO officer review all reasonable accommodation requests to ensure all legal requirements have been met before the department's final decision on the request. (See pages 40 and 41)
42. The SPB and departments continue to broadly publicize mediation as a means for resolving discrimination complaints and encourage its use.
(See page 41)
43. The SPB promulgate a new regulation requiring departments to track informal discrimination complaints and report them to the SPB on a quarterly basis.
(See page 42)
44. The SPB promulgate a new regulation requiring departments to track formal discrimination complaints and report them to the SPB on a quarterly basis.
(See pages 42 and 43)
45. The SPB work to complete its automated, interactive, Internet-based discrimination complaint tracking system, and the SPB coordinate this effort with departmental efforts to improve tracking systems. (See pages 42 and 43)

46. The SPB provide additional training to departmental staff regarding how to properly report discrimination complaint information to the SPB. (See pages 42 and 43)
47. Departments review the adequacy of their resources for completing workload required by the SPB to prevent employment discrimination, provide equal employment opportunity, and to deal effectively with discrimination complaints, and develop any needed budget change proposal to obtain needed resources. (See page 43)
48. The SPB promulgate a new regulation mandating that departments report both informal and formal discrimination complaints and DFEH and EEOC complaints to the SPB on a quarterly basis. (See page 43 and 44)
49. The SPB change its reporting of discrimination complaint data from a calendar year basis to a fiscal year basis to be consistent with its reporting of other employment data. (See page 43 and 44)
50. The SPB conduct on-site reviews of the discrimination complaint process in a limited number of departments each year and provide feedback on what improvements are needed. (See page 44)
51. Departments include needed improvements to their discrimination complaint process in their EEO plan and see that they are implemented. (See page 44)
52. The SPB's Appeals Division management ensures that discrimination complaint appeals are identified by type of discrimination alleged and that this information is entered into the automated case tracking system (ACTS) database. (See pages 45 and 46)
53. The SPB's Appeals Division prepare quarterly reports on its decisions in discrimination complaint and reasonable accommodation appeals showing the disposition to facilitate monitoring by the SPB's Office of Civil Rights. (See pages 45 and 46)
54. The SPB's Appeals Division investigate why discrimination complaint appeals, and in particular, reasonable accommodation appeals, take longer than 180 days to complete and identify ways to reduce time to close cases. (See pages 45 and 46)
55. The SPB clarify, by statute or regulation, that statistical and other employment information needed to support a claim of discrimination is public information and that complainants must be granted access to this information when requested. Such information would include, but not be limited to, employment lists, bottom-line reports, and management information system reports. (See pages 45-47)

- 56. The SPB develop a statutory requirement that departments track the costs associated with their discrimination complaint activity and report the information to the SPB annually. (See page 47 and 48)
- 57. The SPB's Appeals Division track the costs associated with department discrimination complaint activity and include this information in their report to the Legislature. (See pages 47 and 48)
- 58. The SPB include the costs associated with departmental discrimination complaint activity in its annual report to the Legislature. (See pages 47 and 48)

IV. THE STATE NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

It is the policy of the State of California to provide equal employment opportunity to all job applicants and employees and to have non-discriminatory employment practices. Both federal and state law mandates this policy. Government Code Section 18500 specifically requires...

... a comprehensive personnel system for the state civil service, in which... applicants and employees are treated in an equitable manner without regard to political affiliation, race, color, sex, religious creed, national origin, ancestry, marital status, age, sexual orientation, disability, political or religious opinions, or non-job-related factors.

In addition, Government Code Sections 19700-19706 prohibit discrimination in state employment on the basis of race, color, religion, sex, national origin, ancestry, age marital status, political affiliation or opinion, and physical or mental disability. Further, they empower the SPB to issue cease and desist orders upon a finding of discrimination and to take remedial actions that may include awarding compensatory damages.

Implicit in this policy is the obligation of state departments to prevent employment discrimination from occurring to the extent possible, and to quickly act to eliminate discrimination when it is discovered. Discriminatory acts are most often brought to the attention of a department through a complaint filed by an employee. For calendar year 2000, the last year for which there are complete statistics, the number of complaints were as follows:

**Statewide Departmental Formal Complaints
By Type of Discrimination For 2000**

<i>Discrimination Type</i>	<i>Total *</i>	<i>Percentage</i>
Age	77	7.0%
Ancestry	43	3.9%
Color	59	5.3%

Disability	103	9.3%
Marital Status	12	1.1%
National Origin	55	5.0%
Political Affiliation	4	0.4%
Race	182	16.5%
Religion	17	1.5%
Retaliation	214	19.4%
Sex	133	12.1%
Sexual Harassment	188	17.0%
Sexual Orientation	16	1.5%
Total	1,103	100.0%

* Includes multiple complaints from individuals

V. THE RIGHT TO FILE A DISCRIMINATION COMPLAINT

If an applicant or employee believes that he/she has suffered employment discrimination by a state department, he/she has a legal right to file a discrimination complaint and seek redress. The complaint must be filed within one year of the alleged unlawful discrimination. This period may be extended up to 90 days if the person first learns of the alleged unlawful discrimination after the expiration of the one-year period.

Government Code Section 19702(g) states, in part,...

Any person claiming discrimination within the state civil service may submit a complaint ... The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

VI. THE DISCRIMINATION COMPLAINT PROCESS

In order for applicants and employees to exercise their right to file a discrimination complaint, **SPB Rule 547.2** requires departments to either have their own SPB-approved complaint procedures in place, or follow the SPB's standard procedure.

SPB Rule 547.2 states, in part,...

Each appointing power may establish a written procedure through which an employee may obtain consideration for an allegation of discrimination. All such procedures are subject to the approval of the executive officer. Until the appointing power establishes an approved procedure, the standard procedure prescribed by the executive officer shall apply.

The **standard procedure** is outlined in **SPB Rule 54.2**. It states that a department's discrimination complaint process must meet the following standard procedural requirements:

- (1) Provide for satisfying the complaint with a minimum of formal procedural requirements, by an organizational level closest to the employee concerned;
- (2) Provide the opportunity for the employee to receive counseling on a confidential basis by an employee who is qualified to give counseling in matters pertaining to discrimination;
- (3) Assure that no influence will be used to dissuade the employee from airing a complaint, that no complaint will be suppressed, nor will an employee be subject to reprisal for voicing a complaint or participating in the complaint procedure;
- (4) Assure that the employee's complaint will receive preferred, timely and full consideration at each level of review;
- (5) Assure that investigation into the circumstances surrounding the complaint will be performed by qualified and impartial persons; and
- (6) Assure that the employee will be informed of all rights at each step of the process, including the right of appeal to the board or to file with the appropriate state or federal agency or court having jurisdiction.

Complainants may file an appeal of a department's decision regarding a discrimination complaint with the State Personnel Board, the Department of Fair Employment and Housing (DFEH), and/or the U.S. Employment Opportunity Commission (EEOC). Appeals to the SPB must be filed within 30 days of receipt of the written final decision of the department.

VII. STUDY METHODOLOGY

Evaluation Factors

To determine whether departmental discrimination complaint processes are "effective, accessible, and fair," the following factors were examined:

1. Efforts to Prevent Discrimination and Minimize Complaints

- (a) A written non-discrimination policy statement has been issued by the current department director;
- (b) Non-discrimination policy statements specifically identify and describe the legally protected categories, including retaliation, sexual harassment, and reasonable accommodation;

- (c) Departments prominently display posters on non-discrimination and equal employment opportunity legal requirements;
- (d) There is an independent and objective departmental EEO officer managing the discrimination complaint process;
- (e) There is a trained departmental reasonable accommodation coordinator;
- (f) Employment law training is provided to managers and supervisors; and
- (g) Adverse action is taken against perpetrators of discrimination and retaliatory actions.

2. The Accessibility of the Discrimination Process to Employees

- (a) Departments have written discrimination complaint procedures
- (b) Departments have distributed written discrimination complaint procedures to all their employees;
- (c) There is an informal discrimination complaint process to try to quickly resolve discrimination complaints;
- (d) Employees know how to use the informal discrimination complaint process;
- (e) There are an adequate number of EEO counselors to assist employees;
- (f) Departmental EEO counselors have completed EEO counselor training;
- (g) The names and telephone numbers of EEO counselors are prominently posted for employees to see; and
- (h) Employees know who their departmental EEO officer is.

3. Quality of Investigations

- (a) There are an adequate number of EEO investigators in the department;
- (b) Departmental EEO investigators have completed investigator training;
- (c) Complaint investigations are impartial and thorough and findings are sound;
- (d) Investigations are conducted in a timely manner;
- (e) Confidentiality of investigative reports is maintained; and
- (f) The discrimination complaint file is complete and includes a copy of the complaint, the investigative report, witness statements and the investigator's notes.

4. Protection from Retaliation for Using the Discrimination Complaint Process

- (a) Departmental policy statements specifically addresses the prohibition against retaliation; and
- (b) Departments take adverse action against those who retaliate.

5. Adequacy of the Reasonable Accommodation Process

- (a) Departments have a trained reasonable accommodation coordinator;

- (b) Written reasonable accommodation procedures have been distributed to employees;
- (c) Reasonable accommodation procedures include the requirement for an interactive process with the employee;
- (d) Reasonable accommodation requests are given timely consideration;
- (e) Departments keep their employees informed about the status of their accommodation requests; and
- (f) Departments provide their employees with their appeal rights.

6. Use of Mediation to Resolve Complaints

- (a) Departments offer their employees the opportunity to resolve complaints through mediation.

7. Adequacy of Monitoring and Reporting Discrimination Complaint Activity

- (a) Departments have an effective tracking system for informal complaints;
- (b) Departments have an effective tracking system for formal complaints, including DFEH and EEOC complaints;
- (c) Departments report discrimination complaint activity promptly to the SPB on a quarterly basis; and
- (d) Departments provide complete and accurate discrimination complaint information to the SPB.

8. Discrimination Complaints Appealed to the SPB

- (a) The SPB processes and adjudicates discrimination complaint appeals on a timely basis.

9. Cost to the State to Resolve Discrimination Complaints

- (a) Departments and the SPB track the resources and costs of handling discrimination complaints.

QUESTIONNAIRES

To assess the current status of departmental discrimination complaint processes, staff developed two questionnaires – one to gather information from state employees, the other to gather information from state departments. The questionnaires were developed with the input and assistance of the Joint Labor/Management Committee on Discrimination and the California Civil Rights Officers Council.

Employee Questionnaires

Questionnaires were mailed to 2,319 state employees, of which 2,294 were deliverable. This represented a 1.0% sample of full-time, part-time and intermittent employees selected randomly. Employees returned 485 (21.1%) usable questionnaires. Of the employees who returned a questionnaire, 44 (9.1) had used the informal discrimination complaint process. Of these, 16 (36.4%) were able to successfully resolve their complaint, and 28 (63.6%) were not able to successfully resolve their complaint.

There were 53 formal discrimination complaints filed by employees who returned questionnaires. Of these, 21 were filed directly with departments and two (9.5%) were successfully resolved; 12 were filed with DFEH and two (16.7%) were successfully resolved; and 20 were filed with EEOC and 1 (5.0%) was successfully resolved.

Relationship between Sample of Employees and Total State Service

	Sample (Responses)		Population (as of 12/00)	
Number Employees	485	100.0%	209,922	100.0%
# Dept'l Complaints*	21	4.3%	676	0.3%
# Successful**	2	9.5%	99	14.6%

* Individual departmental complaints only for calendar year 2000.

** Discrimination Found or Complaint Resolved by Mutual Consent

While the percentage of employees filing discrimination complaints in state service is very small (0.3%), the percentage responding to the questionnaire who indicated they had filed a complaint was much larger (4.3%). This appears to indicate a much higher level of interest in this study by those who had filed complaints in calendar year 2000.

Departmental Questionnaires

Questionnaires were sent to all departments having over 50 or more employees. There were 89 state departments. All departments returned a questionnaire; however, many questionnaires were incomplete or contained inaccurate information which required extensive follow-up with departments. Some information provided by departments were estimates because requested information was not tracked and records were not kept. This information will be identified later in this report.

On-Site Reviews of the Departmental Discrimination Complaint Process

To supplement information from the questionnaires, particularly regarding the departmental investigations of discrimination complaints, on-site reviews were conducted in the 16 state departments listed below. Departments were selected based on information received from the questionnaires and other statistical information compiled by staff for calendar year 2000.

- | | |
|-----------------------------------|-----------------------------------|
| California Conservation Corps | General Services |
| Consumer Affairs | Health Services |
| Corporations | Justice |
| Corrections | Mental Health |
| Developmental Services | Motor Vehicles |
| Employment Development Department | Prison Industries Authority |
| Equalization | State Compensation Insurance Fund |
| Financial Institutions | Teale Data Center |

Interviews were held with departmental Equal Employment Opportunity (EEO) officers, counselors and investigators. In addition, a sample of discrimination complaint files and reports were reviewed to determine the completeness of files, the impartiality and thoroughness of the reports, and soundness of findings.

Three departments (General Services, Justice and the State Compensation Insurance Fund) refused to open their discrimination complaint files for review by the SPB. It should be noted that the SPB has the authority to review these confidential files under the Information Practices Act (Civil Code Sections 1798.24[e], [f], [h], [k] and [p]). These sections permit disclosure of confidential personal information when such disclosure is necessary for a regulatory agency (the SPB) to determine compliance with state law. Further, Government Code Section 19671 grants the SPB the authority to subpoena these records. To appropriately complete its work to review the status of the state discrimination process, the SPB should take all reasonable action to gain access to the discrimination complaint files in these three departments.

VIII. DISCUSSION, FINDINGS AND RECOMMENDATIONS

1. Efforts to Prevent Discrimination

Having a passive non-discrimination policy is not sufficient to prevent employment discrimination. State departments must actively discourage discriminatory acts by having policies and procedures in place that make it clear that such acts will not be tolerated, and the perpetrators will be appropriately punished. In addition, departments must promote a working environment that is free of hostility and harassment, where employees do not fear retaliation for filing complaints. The following are the elements of a discrimination complaint process that focus on prevention:

(a) A written non-discrimination policy statement has been issued by the current departmental director.

Findings:

Questionnaire	Yes		No		No Response	
Department	51	57.3%	38	42.7%	N/A	N/A
Employee	249	51.3%	213	43.9%	23	4.7%

For the state's non-discrimination and equal employment opportunity policy to work effectively, state employees must be informed about the policy, and be convinced that departments take the policy seriously and consider it important. Although 51 (57.3%) departments have issued a written non-discrimination policy, 42 (82.4%) of those have not distributed the policy within the past three years. Additionally, only 51.3% of employees indicate they have received information about the state's non-discrimination policies; therefore, it appears this information is not being effectively distributed to many state employees. The state needs to strengthen its requirements for distributing this information to employees. To ensure that all employees are properly informed about the policy,

information needs to be issued to employees at the time they are first employed and periodically reissued to keep the policy visible.

Recommendation:

#1. The SPB develop a new regulation requiring departments to issue written non-discrimination policy statements to all their employees when first employed and at least once every three years thereafter.

(b) Non-discrimination policy statements specifically identify and describe the legally protected categories, including sexual harassment, reasonable accommodation and retaliation.

Findings:

Most departmental non-discrimination policy statements do not contain enough detail defining the protected categories to inform employees about what is and is not protected under federal and state non-discrimination laws, e.g., age discrimination relates to those employees over 40 years old. The categories most frequently defined were sexual harassment (86.5%), physical disability (60.7%), and mental disability (50.6%). The following results from the departmental questionnaires indicate the percentages of departments defining protected categories:

Percentage of Departments Defining Protected Categories for Their Employees

Protected Category	Yes	No	No Response
Age	27.0%	70.1%	02.2%
Ancestry	07.9%	88.8%	03.4%
Color	11.2%	85.4%	03.4%
Marital Status	06.7%	89.9%	03.4%
Medical Condition	21.3%	75.3%	03.4%
Mental Disability*	50.6%	48.3%	01.1%
National Origin	11.2%	84.3%	04.5%
Physical Disability*	60.7%	38.2%	01.1%
Political/Religious Opinion	07.9%	87.6%	04.5%
Political Affiliation	05.6%	91.0%	03.5%
Race	12.4%	84.3%	03.4%
Religious Creed	11.2%	84.3%	04.5%
Retaliation	15.7%	80.9%	03.4%
Sex (includes Pregnancy)	22.5%	71.9%	05.6%
Sexual Harassment:	86.5%	12.4%	01.1%
Sexual Orientation	21.3%	75.3%	03.4%

*Includes Reasonable Accommodation

Recommendation:

#2. Departments include definitions of the protected categories in their non-discrimination policy statements.

(c) Departments prominently display posters on non-discrimination and equal employment opportunity legal requirements.

Findings:

Questionnaire	Yes		No		No Response	
	Count	Percentage	Count	Percentage	Count	Percentage
Department	85	95.5%	4	4.5%	N/A	N/A
Employee	297	61.2%	178	36.7	10	2.1%

The Department of Fair Employment and Housing (DFEH) poster alerts employees that employment discrimination is against the law and provides information on how to file a complaint with DFEH. Displaying the poster is required under the Fair Employment and Housing Act (FEHA). Prominently placed posters are a constant reminder of the legal prohibitions and foster prevention of employment discrimination. A poster should be on display at every location that a department has an office or facility. The disparity in the results of the two questionnaires shown above would suggest that although departments are displaying the poster, about one-third of employees are not noticing it. Posters need to be more visible to employees. Currently, there is no poster informing employees about the state discrimination complaint process requiring direct filing with the department, with a right of appeal to the SPB. Because of this, the only constant reminder about the employee's right to appeal alleged discrimination is the DFEH poster.

Recommendations:

#3. The SPB issue a reminder to departments of their legal obligation to prominently display the DFEH non-discrimination poster and to call employees' attention to it.

#4. The SPB develop and distribute a poster informing state employees about the state discrimination complaint process and an employee's right to appeal to the SPB.

(d) There is an independent and impartial EEO officer managing the discrimination complaint process.

Findings:

Departments Have an EEO Officer

Questionnaire	Yes	No	No Response
Department	89 100.0%	0 0.0%	NA NA

The EEO Officer Reports to the Directorate

Questionnaire	Yes	No	No Response
Department	59 66.3%	33 33.7%	NA NA

The EEO Officer Directs EEO Investigators

Questionnaire	Yes	No	No Response
Department	75 84.3%	13 14.6%	1 1.1%

The departmental EEO officer is responsible for facilitating departmental compliance with non-discrimination laws and managing the discrimination complaint process. Currently, all departments surveyed indicated they had an EEO officer; however, only 66.3% indicated the position reported to the directorate. The EEO officer directs the investigation of discrimination complaints in 84.3% of the departments surveyed. Employees need to have confidence that their complaints will be dealt with fairly and impartially. Only 40.6% of employees surveyed, however, indicated they have confidence that their department fairly investigates and resolves discrimination complaints. Departments need to improve this level of employee confidence.

To help increase employee confidence, the EEO officer's position needs to be highly visible (only 39.0% of the employees know the name of their EEO officer) and seen as independent and objective. To accomplish this, it is very important for the EEO officer to have sufficient authority and independence from other human resource and line programs to objectively monitor and assess the department's personnel policies and practices, and to deal impartially and fairly with discrimination complaints. By being at the appropriate classification level and reporting to the directorate, the EEO officer can have the visibility and the level of support needed to ensure that the department's EEO efforts are appropriately implemented at all levels within the department. The level of the EEO officer ranges from staff services analyst to exempt. It is questionable whether those EEO officers allocated to the lower classification levels have sufficient authority to be effective. The following EEO officer position allocations have not been reviewed in many years for appropriateness of classification level and need to be reviewed.

Classification Level of Departmental EEO Officers

Classification	Number	Percent
Exempt	6	6.8
Career Executive	8	9.0
Staff Services Manager II (Mgr'I)	4	4.5
Staff Services Manager II (Sup)	27	30.4
Staff Services Manager I	28	31.4
Associate Analyst Level Classes	13	14.5
Staff Services Analyst	3	3.4
Total:	89	100.0

To be effective, the EEO officer must be knowledgeable of employment and civil rights law. All 16 of the EEO officers interviewed indicated they had received some employment law training, but all admitted it was difficult to keep current and could use additional training periodically to update their knowledge.

Recommendations:

#5. The SPB propose new legislation requiring each appointing authority appoint an EEO officer who reports directly to the departmental director or chief deputy director and be independent of human resources and line programs.

#6. The SPB propose new legislation to specify that the EEO officer is responsible for managing the departmental discrimination complaint process.

#7. The SPB, in cooperation with the California Civil Rights Officers Council (CCROC) and the Department of Personnel Administration, review EEO officer positions to determine the appropriate classification level.

(e) There is a trained departmental reasonable accommodation coordinator.

Findings:

Questionnaire	Yes	No	No Response
Department	84 94.4%	3 3.4%	2 2.3%

By law, reasonable accommodation must be provided to qualified employees with disabilities, when needed to perform the essential job functions, unless it creates an undue hardship on the employing department. Inappropriate denial of reasonable accommodation is

disability discrimination and can lead to discrimination complaints. In calendar year 2000, there were 103 discrimination complaints based on disability. These amounted to 9.3% of the complaints filed with departments. A well-trained reasonable accommodation coordinator is critical to reducing or preventing such complaints.

The table above indicates that, of the 89 departments, 84 (94.4%), have a RA coordinator. All departments need a fully trained RA coordinator. The table below, however, shows that not all RA coordinators have completed needed training. Eighty-four percent have received training on the reasonable accommodation requirements of the Americans with Disabilities Act (ADA), and only 55.1% have received training on the requirements of the Fair Employment and Housing Act (FEHA).

Training	Yes		No		No Response	
Americans with Disabilities Act	75	84.3%	11	12.4%	3	3.4%
Fair Employment & Housing Act	49	55.1%	30	33.7%	10	11.2%

Recommendations:

#8. The SPB promulgate a regulation requiring departments to have at least one trained reasonable accommodation coordinator.

#9. Departments ensure their reasonable accommodation coordinators receive training on the reasonable accommodation provisions of both the ADA and the FEHA.

- (f) **Employment law training is provided to departmental managers and supervisors.**

Findings:

Percentage of Departments Providing Training To Managers and Supervisors

Questionnaire	Yes		No		No Response	
Department	68	76.4%	21	23.6%	0	0.0%

Seventy-six percent of managers and supervisors have received some employment law training. Most of the training currently being provided, however, is very limited and is given as part of the state's "Basic Supervisory Training" offered through the State Training Center. Two sets of figures are provided below indicating the percentage of managers that have completed training. The first set was given in response to a general question about training. The second set was given in response

to questions in the specific section of the questionnaire dealing with the topic. When asked more specifically about ADA/Reasonable Accommodation training, the percentage of supervisors that had received training dropped from 71.2% to 47.7%. When asked more specifically about sexual harassment training, the percentage of managers and supervisors who completed training rose from 74.4% to 85.3%. All managers and supervisors need to complete training in these areas.

The following are the percentages of managers and supervisors who have received employment law training as indicated by the departmental questionnaires:

Percentage of Managers and Supervisors Trained

Departmental Questionnaire	Yes	No
<u>General EEO/Non-discrimination:</u> Questions #90 & #92 (85 departments responding)	72.2%	27.8%
<u>ADA/Reasonable Accommodation:</u> Question #96 (44 departments responding) Question #222 (67 departments responding)	71.2% 47.7%	28.8% 63.3%
<u>Sexual Harassment:</u> Question #94 (73 departments responding) Question #241 (81 departments responding)	74.4% 85.3%	25.6% 14.7%

State managers and supervisors need knowledge of employment law in order to recognize employment discrimination, and appropriately deal with it when it occurs. While additional training is currently available, primarily through contracts with private training consultants, there is no required comprehensive, uniform training provided, and no continuing education to keep managers and supervisors up-to-date on changes in legal requirements. Properly trained managers and supervisors are less likely to discriminate, and more likely to recognize and handle discrimination issues quickly and effectively, thereby reducing discrimination complaints and lawsuits and the associated costs and resources needed to deal with them.

Recommendation:

#10. The SPB form a task force to explore the development of a new comprehensive basic EEO/non-discrimination law training program for state managers and supervisors.

(g) Adverse action is taken against those who perpetrate discriminatory and/or retaliatory actions.

Findings:

Fair and consistent action taken against those who discriminate is important to help deter discrimination. Lack of action can be interpreted to mean favoritism, or lack of concern, and may discourage employees from filing complaints.

In calendar year 2000, 592 individual discrimination complaints were closed. Of those, departments made a specific finding in 355 (60.0%) and found discrimination had occurred in 54 (15.2%) cases.

**Actions Taken by Department against Alleged Responsible Party(s)
In Calendar Year 2000 ***

<i>Action Taken</i>	Total	Percent
Demotion	2	2.3%
Dismissal	20	23.0%
Formal Reprimand	3	3.4%
Informal Reprimand	8	9.2%
Reassignment	8	9.2%
Reduction in Salary	5	5.7%
Required Training	12	13.8%
Suspension	8	9.2%
Verbal Counseling	21	24.1%
	Total 87	100.0%

* Sources: SPB Discrimination Complaint Database for calendar year 2000

Recommendations:

#11. The SPB follow-up with departments in 13 cases where discrimination was found to determine why no action was taken against the responsible party.

#12. The SPB revise its quarterly discrimination complaint data collection process to require departments to explain the reason why no action is taken in cases when discrimination is found. (Coordinate with recommendation #33)

2. Accessibility of the Departmental Discrimination Complaint Process

In spite of efforts to prevent employment discrimination, it may occur either intentionally (disparate treatment) or unintentionally (disparate impact). During calendar year 2000, departments reported receiving 676 departmental discrimination complaints from employees, 328 Department of Fair Employment and Housing (DFEH) complaints, and 210 U.S. Equal Employment Opportunity Commission (EEOC) complaints. Regardless of how discrimination occurs, applicants and employees have a right to file a complaint when they feel they have been illegally discriminated against, with their department, DFEH, and/or the EEOC. To ensure that applicants and employees can exercise their right to file a complaint, departments must have a discrimination complaint process that is accessible and usable. Accessibility can be measured by the amount and type of information and assistance that is available through written materials and staff resources. The following information from the two questionnaires provides insight into the accessibility of departmental processes:

(a) Departments have written discrimination complaint procedures

Findings:

Department Questionnaire	Yes		No	
Department Has Own Procedures				
Formal	46	51.7%	43	48.3%
Informal	47	52.8%	42	47.2%
If "No" above, uses the SPB Standard Process	36	83.7%	7	16.3%

SPB Regulation 547.1 states departments may establish their own written complaint procedure, subject to approval by the SPB. It is not required, however, and according to departmental questionnaires, not all departments have them. The questionnaires indicate 51.7% of the departments have their own written discrimination complaint procedures. It is not clear whether any have been approved by the SPB, since the SPB has no current records. Departments that do not have their own written procedures are required to use the standard procedures outlined in SPB Regulation 54.2. Of those departments that do not have their own procedures, 36 (83.7%), said they use the SPB standard procedures. Seven departments (16.3%) indicated they neither have their own written procedures, nor used SPB's standard procedure.

Having written complaint procedures is fundamental to having a consistent way of treating discrimination complaints and informing employees about the process. Employees cannot use the discrimination complaint process if they do not know about the process and how to use it. All departments need to have written procedures. In many of the interviews with department EEO officers, it was suggested the SPB develop a written model discrimination complaint procedure to provide better guidance to departments.

Recommendations:

#13. The SPB promulgate a new regulation requiring departments to have written discrimination complaint procedures. (Coordinate with recommendations #14, #15, and #16)

#14. The SPB develop a model written discrimination complaint procedure identifying essential elements that should be included in an effective procedure. (Coordinate with recommendations #13, #15, and #16)

#15. The SPB review and approve current written departmental discrimination complaint procedures and subsequent revisions. (Coordinate with recommendations #13, #14, and #16)

(b) Departments have distributed written discrimination complaint procedures to all their employees.

Findings:

Questionnaire	Yes		No		No Response	
Department	54	60.7%	35	39.3%	N/A	N/A
Employee	240	49.5%	223	46.0%	22	4.5%

While 60.7% of departments indicate that they have distributed written discrimination complaint procedures to their employees, only 49.5% of employees claim to have received them. It is not clear whether some employees ever received a copy, forgot they had a copy, or lost a copy. Employees most likely rarely pay attention to these types of procedures unless they have a problem. There is no specific requirement that this information be periodically distributed to employees, but reissuing the procedures and/or placing it on the department's Web site would facilitate accessibility to the discrimination complaint process.

Recommendation:

#16. The SPB develop a new regulation requiring departments to provide a copy of their discrimination complaint procedures to all new employees, and to reissue the procedures to all employees every three years and to place their procedures on the departmental Web site. (Coordinate with recommendations #18 and #22)

(c) There is an informal discrimination complaint process to try to quickly resolve discrimination complaints.

Findings:

Questionnaire	Yes		No		No Response	
Department	48	53.9%	38	42.7%	3	3.4%

The informal process is required by SPB Regulation 54.2, and involves having EEO counselors available to counsel employees when they have a discrimination issue and attempt to resolve the issue without a formal investigation. Of the 89 departments, only 48 (52.6%) indicated they had an active informal process during 2000. In interviews with EEO officers, several said they did not use the informal process and treated all complaints formally. Forty-eight departments using the informal process reported receiving 924 informal complaints and that 635 (68.7%) were resolved through the informal process. From this, it appears the SPB's regulatory requirement to resolve complaints with the least amount of formal procedure is not being complied with by a sizeable number of departments.

Forty-four employees (9.1%) said they had used the informal discrimination complaint process. Of these employees, 16 (36.4%) indicated their complaint had been successfully resolved through the informal process. This success rate is much less than the success rate indicated by departments.

Complaints Successfully Resolved Through the Informal Process

Questionnaire	Yes		No	
Department	635	68.7%	289	31.3%
Employee	16	36.4%	28	63.6%

Of employees who indicated they had not used the process (89.5%), 65.3% said they never needed to use the process, 17.2% said they feared retaliation if they used the process, and 13.6% said they had no confidence in the process. Although the reported rates of success in resolving complaints through the informal process are mixed, it appears to be reasonably successful in resolving complaints and reducing the number of formal investigations.

Recommendation:

#17. The SPB revise Regulation 54.2 to clarify and strengthen the requirement that departments have an effective informal discrimination complaint process.

(d) Employees know how to use the informal discrimination complaint process.

Findings:

Questionnaire	Yes		No		No Response	
Employee	200	41.2%	278	57.3%	7	1.4%

Less than 50% of employees indicated they know how to use the informal discrimination complaint process, less than 50% have seen a posted list of the names and telephone numbers of departmental EEO counselors, and less than 25% said they have ready access to an EEO counselor. Currently, there is no specific requirement to post the names and telephone numbers of EEO counselors.

Recommendation:

#18. Departments provide their employees with information on how to use the informal discrimination complaint process by complying with the new regulations proposed in recommendations #16 and #22.

(e) There are an adequate number of EEO counselors to assist employees.

Findings:

Departments are required by SPB Regulation 54.2 to provide EEO counseling to their employees. Of the 89 departments surveyed; however, 18 (20.2%) reported they do not have any EEO counselors. There is currently no standard regarding how many counselors are needed for a department to have an effective informal discrimination complaint process. In some departments, the EEO Office technical staff does all EEO counseling. In other departments, interested line program

staff volunteer or are assigned by management to do counseling. This is particularly the case in departments with many field offices, institutions or hospitals. The number of counselors needed depends on a number of variables, including number of departmental employees, organizational and geographic configuration, and amount of discrimination complaint activity. From interviews with departmental EEO officers, it appears departments have not reviewed whether they have an adequate number of counselors in the last several years. The following is the current ratio of counselors to departmental employees in the 16 departments reviewed on-site:

Ratio of EEO counselors to Departmental Employees (As of 11/25/01)

Department	Employees	Counselors	Ratio
California Conservation Corp	517	2	1:258
Consumer Affairs	4,945	10	1:495
Corporations	263	2	1:132
Corrections	46,458	960	1:48
Developmental Services	10,133	28	1:361
Employment Development	9,715	47	1:207
Equalization	3,959	2	1:1,980
Financial Institutions	206	4	1:52
General Services	4,434	36	1:123
Health Services	6,205	7	1:886
Justice	5,472	26	1:211
Mental Health	8,722	15	1:581
Motor Vehicles	10,396	14	1:743
Prison Industries Authority	771	2	1:386
State Compensation Insurance Fund	7,093	40	1:177
Teale Data Center	377	1	1:377

Recommendation:

#19. The SPB develop criteria to assist departments in determining whether they have an adequate number of counselors.

(f) Departmental EEO counselors have completed EEO counselor training.

Findings:

Questionnaire	Yes		No		No Response	
Department	58	65.2%	22	24.7%	9	10.1%

Of the 89 departments surveyed, 58 (65.2%) indicated that all their counselors had completed SPB counselor training or similar training. A number of EEO officers that were interviewed said they gave their own training to counselors. It is not clear how complete or adequate this internal departmental training is. It is important all EEO counselors be

adequately trained. Untrained counselors are not prepared to effectively deal with informal discrimination complaints. In interviews with a number of departmental EEO counselors, some indicated that all they do is have the complainant put his/her complaint in writing and send it to the EEO officer. Others indicated they try to develop all the facts (investigate) before advising the complainant. These actions are both inappropriate and indicate these counselors do not understand their role and responsibilities.

Several counselors that were interviewed commented on the need to periodically have refresher training where counselors have not done counseling for an extended period of time. Counselors indicated that SPB counselor training is good, but suggested more emphasis be given to practical counseling and interviewing techniques.

Recommendations:

#20. The SPB develop a new regulation requiring all EEO counselors be trained before being assigned counseling duties, and they undergo refresher training every three years.

#21. The SPB revise its EEO counselor training to provide greater emphasis to practical counseling and interviewing techniques.

(g) The names and telephone numbers of departmental EEO counselors are prominently posted for employees to see.

Findings:

Questionnaire	Yes		No		No Response	
Department	35	39.3%	53	59.6%	1	1.1%
Employee	216	44.5%	234	48.2%	35	7.2%

The posting of the names and telephone numbers of departmental EEO counselors is very important in order to have an accessible informal discrimination complaint process; yet, it appears that, of the 89 departments surveyed, only 35 (39.3%) are posting this information. How can an employee with a problem talk to a counselor if she/he does not know who is available to talk to them? Overall, only 21.0% of employees felt they had ready access to an EEO counselor.

Recommendation:

#22. The SPB develop a regulation requiring departments to prominently post the names and telephone numbers of their EEO counselors,

distribute a written list of counselors to all employees, and post the list on the departmental Web site. (Coordinate with recommendations #16 and #18.)

(h) Employees know whom their departmental EEO officer is.

The EEO officer and the EEO office staff are important resources to departmental employees. They provide information and assistance to employees needing help with discrimination issues. In many departments, the EEO office staff does all EEO counseling and investigating. Employees should have ready access to this resource. According to employee questionnaires, however, only 39% of state employees know whom their departmental EEO officer is. Departments need to make their EEO officer and staff more highly visible and known so they are more accessible to department employees needing assistance.

Recommendation:

#23. Departments provide all their employees with a written description of the functions and services of their EEO office and the names and telephone numbers of the departmental EEO officer and staff.

3. Quality of Investigations

(a) There are an adequate number of departmental investigators.

Findings:

Departments are required by SPB Regulation 54.2 to fairly investigate discrimination complaints filed by their employees. Of the 89 departments surveyed, however, 10 (11.2%) reported they did not have any investigators.

Currently, there are no standards for determining how many trained EEO investigators a department should have. An adequate number would depend on an analysis of several variables, such as the number and type of employees, number and location of field offices, history of volume of discrimination complaints, number of complaints that exceed 180 days, etc. The SPB should develop criteria to assist departments in determining whether they have an adequate number of EEO investigators. Departments should then periodically evaluate these factors and make a decision on the number of investigators needed to effectively handle the workload.

For the 16 departments that were reviewed on-site, the ratio of investigators to number of departmental complaints ranged from 2.6

investigators per complaint at the Department of Justice to 1.0 investigator per 11 complaints at the Board of Equalization and Department of Motor Vehicles. From the data shown below, there does not appear to be any close correlation between the number of departmental investigators and the average number of days to close a complaint. Two of the departments with the largest number of investigators, Developmental Services and Justice, were among the departments with the highest average number of days to close a complaint. There does not appear to be any simple formula for determining the appropriate number of departmental investigators.

Ratio of Investigators to the Number of Complaints in 2000

Department	Number of Investigators	Number of Complaints*	Ratio	Ave. # Days To Close
California Conservation Corp	6	11	1:1.8	97
Consumer Affairs	3	12	1:4.0	163
Corporations	2	8	1:4.0	188
Corrections	18	137	1:7.6	82
Developmental Services	33	33	1:1.0	204
Equalization	1	11	1:11.0	109
Employment Development	6	14	1:2.3	109
Financial Institutions	1	1	1:1.0	161
General Services	4	5	1:1.3	111
Health Services	7	39	1:5.6	189
Justice	29	11	2.6:1	255
Mental Health	15	19	1:1.3	167
Motor Vehicles	3	33	1:11.0	243
Prison Industries Authority	1	10	1:10.0	138
State Compensation Insurance Fund	4	3	1.3:1	47
Teale Data Center	1	3	1:3.0	153

*Data only includes departmental complaints.

Source: Departmental Questionnaires and SPB Departmental Discrimination Complaint Database.

Recommendation:

#24. The SPB develop criteria to assist departments in determining whether they have an adequate number of investigators.

(b) Departmental EEO investigators have completed EEO investigator training.

Findings:

Questionnaire	Yes		No		No Response	
Department	66	74.2%	17	19.1%	6	6.7%

Conducting a thorough, fair and impartial investigation requires basic knowledge of civil rights law and investigative procedures. Sixty-six departments (74.2%) indicated on their questionnaire that all their investigators had completed SPB Investigator training or similar training given elsewhere. Seventeen departments (19.1%) stated some of their investigators had not completed investigator training. Departmental investigators must be trained in these areas in order to do their jobs properly.

Small departments (under 500 employees) that do not routinely have complaints requiring investigation have difficulty keeping or obtaining trained investigators with current knowledge and skill. It was suggested there be a pool of trained investigators at the SPB that would be available to small departments when needed. Some other alternatives for small departments include working out an agreement with another department for the loan of an investigator, using a retired annuitant, or contracting out for an investigator.

Of the 89 departments surveyed, 44 (49.4%) felt the SPB's investigator training class adequately prepared their staff to conduct investigations. A number of departments would like to see more emphasis on the practical steps in conducting an investigation, including interviewing techniques, and report writing. This was confirmed in interviews with department investigators.

Recommendations:

#25. The SPB develop a new regulation requiring all EEO investigators be trained before being assigned investigative duties and they undergo refresher training every three years.

#26. The SPB revise its technical investigator training class to provide more emphasis on the practical aspects of conducting an investigation, including steps in the investigative process, interviewing techniques, and report writing.

#27. The SPB, in cooperation with departmental EEO officers, explore how small departments can most effectively obtain needed resources to investigate discrimination complaints.

(c) Complaint investigations are impartial and thorough, and the findings are sound.

Findings:

In interviews with departmental EEO investigators, it was generally indicated that departmental managers and supervisors were cooperative with their investigations, but occasionally were overly defensive and resistant. In interviews with EEO officers, three out of 16 (18.8%) indicated

at one or more times a departmental manager had attempted to influence a discrimination complaint investigation.

Staff reviewed 41 investigative reports in 13 departments; 21 (51%) appeared to be impartial and thorough and the findings sound; 12 (29%) had minor problems; eight (20%) had serious problems. Problems identified included:

Minor Problems

- No clear distinction made between complainant and alleged responsible party witnesses;
- Witnesses were identified by name in many reports;
- Some investigations held open longer than needed because complainants did not provide requested information on a timely basis; and
- No formal work plan initiated in the investigative complaint process.

Serious Problems

- No clear indication of a prima facie case established;
- Case closed without investigation because department did not believe a prima facie case established--complaint clearly showed a prima facie case (department has since been ordered by the SPB to reopen and investigate the complaint);
- Could not corroborate investigators findings because witness statements were missing from the file;
- Investigations closed before all issues were addressed;
- Investigation closed prematurely when complainant filed a DFEH complaint;
- Investigation closed prematurely when complainant or alleged responsible party left the department; and
- Investigative report contained some personal opinions of the investigator--objectivity of the investigator was questionable.

Of the 41 investigative reports reviewed, staff was able to follow up on 31 (75.6%) to determine the action taken by the department. Action taken as the result of the other 10 reports could not be traced due to missing information or coding errors which prevented matching departmental records with SPB records.

Conclusion - No Discrimination Found

Based on findings in 26 (83.9%) of the 31 reports, departments concluded that no discrimination had occurred, and took no action against the alleged responsible party. In 20 (76.9%) of these cases, staff believed that the investigative finding fully supported the conclusion. In the other six cases (23.1%), however, staff believed that the findings were incomplete and that the conclusion was premature.

Conclusion - Discrimination Found

As a result of the investigative findings, departments concluded that discrimination had occurred in five (15.6%) of the complaints. In all of these cases, staff believed that the conclusion was supported by the investigative findings. Staff believed, however, that not all actions taken by the departments were consistent with the findings. In two cases, the actions seemed appropriate - a reduction in pay and a suspension. In three cases, however, the action taken appeared to be too lenient - reassignment.

It is not clear how many of the investigative reports were written by investigators that completed investigator training. Even if all were trained, it is evident that some need additional training (See recommendation #25.). It also appears some investigative reports may not have been thoroughly reviewed by department management. Aside from any departmental shortcomings in the investigative reports, however, it appears the SPB needs to provide some clarification regarding the standards for opening and closing discrimination complaints.

Recommendation:

#28. The SPB develop a regulation that sets forth the standards for opening and closing out a discrimination complaint investigation.

(d) Investigations are conducted in a timely manner.

Findings:

In complaints filed directly with state departments, there is currently no statutory or regulatory standard for timeliness in completing an investigation and making a decision on a discrimination complaint. In the past, however, 180 days has been recognized as a reasonable period of time and has been the unofficial standard.

In calendar year 2000, the average time for completing a discrimination complaint was 149 days. Out of 592 closed cases, 208 (35.1%), went beyond 180 days. Thirty-six departments had complaints exceeding 180 days. The longest amount of time taken to close a complaint was 559 days. There are still some cases that have not been closed. These cases have not met the SPB regulatory requirement of being "preferred" and "timely." There appears to be little reason for complaints requiring so much

time to complete. Departments should have closed some cases much earlier. In some cases, departments indicated that staff resources were lacking (Note: Resources need to be reviewed in accordance with recommendation #47). In some others, departments kept giving complainants more time to respond to requests for information. SPB does not have sufficient resources to review all such cases. To help reduce or eliminate cases exceeding 180 days, there is a need to establish a formal standard for completion of discrimination complaints.

Recommendation:

#29. The SPB revise its regulations to include a time limit of 180 days for a department to complete a discrimination complaint investigation and issue a decision before an employee can appeal directly to the SPB.

(e) Confidentiality of investigative reports is maintained.

Findings:

The confidentiality of investigative reports appeared to be well maintained in most of the 16 departments reviewed on-site. The reports were kept in the discrimination complaint file, the file was kept locked and access was limited to those dealing directly with the complaint. In two departments, however, departmental staff could not locate some of the files requested by SPB staff for review, and they did not know who had them. This raised some questions about file security.

According to departmental questionnaires, discrimination complaint files are located in different units in various departments: 54.3% in the EEO Office; 41.5% in the Personnel Office; 2.1% in the Legal Office; and, 2.1% in some other unit. It is unclear whether the location of the files presents any security issues at this time. All departments reviewed on-site said that their files were secure. Guidance is needed on who should have access to the discrimination complaint files.

Recommendation:

#30. The SPB work with departments to develop guidelines on who may have access to departmental discrimination complaint files during and following investigations of complaints. (See pages 34 and 35)

(f) The discrimination complaint file is complete and includes a copy of the complaint, the investigative report, witness statements, and the investigator's notes.

Findings:

During on-site reviews of the 16 departments, staff reviewed 46 discrimination complaint files. Of those files reviewed, 37% were found to

be complete; 43% were found to have minor items missing; and 20% had major items missing. Missing items included:

Minor Items:

- Table of contents;
- Tour of work site report; and
- Investigative work plan.

Major Items:

- Copy of complaint/ charges;
- Complainant's statement (interview);
- List of witnesses/persons contacted;
- Statement of complainant's witnesses;
- Statements of alleged responsible party and his/her witnesses;
- EEO counselor report;
- Investigator's complaint analysis/report; and
- Investigator's notes.

Recommendation:

#31. Departments organize and maintain their discrimination complaint files in accordance with the SPB's EEO Investigator Training Course guidelines.

4. Protection from Retaliation for Using the Discrimination Complaint Process

(a) The department's non-discrimination policy specifically addresses the prohibition against retaliation.

Findings:

Questionnaire	Yes		No		No Response	
Departmental	14	15.7%	72	80.9%	3	3.4%

In 2000, there were 214 complaints alleging retaliation filed with departments. This constituted 19.3% of all complaints and was the category with the greatest number of complaints filed. Of the 93.0% of employees, who indicated on their questionnaire that they had never filed a discrimination complaint, 18.0% responded they had not filed a complaint because they feared their department would retaliate against them.

Departments need to do more to reduce employees' fear of retaliation. Only 15.7% of departments specifically address retaliation in their policy statements. Departmental policy statements need to specifically address

the prohibition concerning retaliation against an employee for using the discrimination complaint process. Employees need to know that anyone who does retaliate will receive disciplinary action.

Recommendation:

#32. The SPB develop a regulation requiring departments to develop and distribute a policy statement prohibiting retaliation for use in the discrimination complaint process. (Coordinate with recommendations #1 and #2)

(b) Adverse action is taken against the responsible party.

Findings:

Of the 214 complaints of retaliation received by departments in 2000, formal investigations found discrimination in nine of these cases (4.2%). There was action taken against those that discriminated in all nine cases. Actions ranged from verbal counseling to dismissal. If departments had not taken action, however, there is currently no requirement that they explain why no action was taken in cases where discrimination is found when submitting quarterly information to the SPB.

Recommendation:

#33. The SPB implement recommendation #12 in order to more fully monitor actions/no action taken against those found by departments to have retaliated against another employee.

5. Adequacy of the Reasonable Accommodation Process

Both federal and state law requires that employers provide reasonable accommodation to qualified job applicants and employees with disabilities in order that they may take an examination or satisfactorily perform the essential functions of a job, unless it would be an undue hardship for the employer to provide it. Failure to provide a needed accommodation can be grounds for filing a discrimination complaint. State departments must have trained staff and procedures in place to effectively deal with accommodation requests.

During calendar year 2000, of the 89 departments surveyed, 69 (77.5%) indicated they had received 1,850 requests for reasonable accommodation. Of these requests, 1,534 (82.9%) were approved and 316 (17.1%) were denied.

(a) The department has a trained reasonable accommodation coordinator.

Findings:

Questionnaire	Yes		No		No Response	
Department	84	94.4%	3	3.4%	2	2.3%

Of the 89 departments surveyed, 84 (94.4%) indicated they had a RA coordinator. The RA coordinator positions are located in various departmental units – Personnel Office (44 departments [52.4%]), EEO Office (31 departments [36.9%]), Health & Safety Office (seven departments [8.3%]), and other departmental units (2 departments [2.4%]). Of the 84 departments that have a RA coordinator, 84.3% indicate the RA coordinator has had training in the requirements of the ADA, but only 55.1% indicate the RA coordinator has had training in the requirements of the FEHA. Departments need to ensure all RA coordinators receive training in the requirements of both laws.

Training for RA coordinators is available from a variety of sources – the SPB, Department of Rehabilitation, State Training Center, and private consultants. RA coordinators in 46 departments (51.7%) have completed the SPB technical training in reasonable accommodation. Of these, 33 (71.7%) thought the SPB training prepared them adequately to perform their duties as a reasonable accommodation coordinator. Although a large percentage felt the training was adequate, staff feels there is room for improvement that might further enhance the training.

Recommendation:

#34. The SPB review its technical training course on reasonable accommodation to determine how it might be improved. The SPB should consider input from departmental EEO staff and reasonable accommodation coordinators for improving the course.

(b) There are written reasonable accommodation procedures.

Findings:

Questionnaire	Yes		No		No Response	
Department	79	88.8%	9	10.1%	1	1.1%

Although 88.8% of departments say they have reasonable accommodation procedures, only 62.9% indicate they have distributed the procedures to their employees. All departments should have procedures in place and issue those procedures to their employees. Currently, however, there is no statutory or regulatory requirement to do this.

Recommendation:

#35. The SPB promulgate a regulation requiring that departments issue written reasonable accommodation procedures to all their employees.

(c) Reasonable accommodation procedures include their requirement of an interactive process.

Findings:

Questionnaire	Yes		No		No Response	
Department	79	88.8%	5	5.6%	5	5.6%

The law requires, and all departmental reasonable accommodation procedures must include, an interactive dialogue between the employee and the department in dealing with requests for reasonable accommodation. Of the 89 departments, 79 (88.8%) indicated that an interactive process was included in their procedures.

Of the employees responding to the questionnaire, 14.0% indicated they had made a reasonable accommodation request. Of these, only 48.5% indicated their department had engaged in an interactive dialogue with them.

Recommendations:

#36. The SPB require departments to include a provision for the interactive process, including who has responsibility for initiating the process, in their departmental reasonable accommodation procedures. (Coordinate with recommendation #37 and #39.)

#37. The SPB revise and reissue to departments its booklet *Guide to Implementing Reasonable Accommodation* and include information about the requirement for the interactive process. (Coordinate with recommendations #36 and #39.)

(d) Reasonable accommodation requests are given timely consideration.

Findings:

Questionnaire	Yes		No		No Response	
Department	72	80.9%	11	12.4%	6	6.7%

SPB Regulation 53.2 requires departments to respond in writing to an employee's request for reasonable accommodation within 20 days of the request. Departmental questionnaires indicate that about 80% of departments comply with this requirement. Interviews with departmental EEO staff indicate there is some confusion about this requirement. Some think it means they have to provide the employee with a final decision on the request within 20 days. This is not possible in many cases due to delays in getting medical information from a doctor. The timeliness requirement needs clarification.

Recommendation:

#38. The SPB revise Regulation 53.2 requiring departments to provide the employee with a final decision on his/her request within 20 working days after receiving medical information from the employee's licensed health care practitioner.

- (e) **Departments keep their employees informed about the status of their reasonable accommodation requests.**

Findings:

Questionnaire	Yes		No		No Response	
Employee	32	47.1%	36	52.9%	NA	NA

Of the 485 employees who responded to the employee questionnaire, 68 employees (14.0%) made a request for reasonable accommodation. Of those who made accommodation requests, 32 (47.1%) indicated the department had kept them informed about the status of their request. This closely corresponds to the 48.5% who responded that their department had engaged in an interactive dialogue with them regarding their accommodation request.

Recommendation:

#39. In implementing the statutory requirement for an interactive process, departments ensure they keep employees informed about the status of their reasonable accommodation requests. (Coordinate with recommendations #36 and #37)

- (f) **Departments provide their employees with their appeal rights.**

Findings:

Employees Denied Accommodation Given Appeal Rights

Questionnaire	Yes		No		No Response	
Employee	1	2.6%	38	97.4	NA	NA

SPB Regulation 53.2 requires departments to inform employees of their appeal rights when accommodation requests are denied. Of the 68 employees who indicated on the employees questionnaire they had requested reasonable accommodation, 39 (57.4%) were denied. This is a much higher percentage than the 17.1% denial rate indicated by departments. This may indicate a higher level of interest in responding to the survey by employees who were denied accommodation. Of those who were denied accommodation, only 1 (2.6%) indicated that she/he had been advised about appeal rights. This response rate is disturbing.

Unfortunately, there is no comparable data from the departmental questionnaires with which to compare responses.

Recommendations:

#40. Departments ensure their written reasonable accommodation procedures include a provision for providing employees their appeal rights.

#41. The SPB revise Regulation 53.2 to require the EEO officer review all reasonable accommodation requests to ensure all legal requirements have been met before the department's final decision on the request.

6. Use of Mediation to Resolve Discrimination Complaints

(a) Departments offer their employees the opportunity to resolve their complaints through mediation.

Findings:

Questionnaire	Yes		No		No Response	
Department	43	48.3%	43	48.3%	3	3.4%
Employee	15	28.3%	63	71.7	NA	NA

Mediation is the newest form of dispute or complaint resolution offered by the state. It is a process whereby the involved parties get together with a trained mediator and try to resolve the complaint. The mediator tries to facilitate communications between the parties in order that each party may better understand the other's point of view. Better understanding can often lead to resolution of issues without the need to file a formal complaint. The process is voluntary on both parties and is not binding.

Forty-three (48.3%) departments indicated they offered mediation to complainants. They reported that 121 employees accepted mediation and that 70 (57.9%) complaints were resolved through the process. Of the 21 employees in the survey who filed discrimination complaints with their departments, 15 (71.4%) said they had been offered mediation. Six of these employees (40.0%) said they had successfully resolved their complaint through mediation.

Recommendation:

#42. The SPB and departments continue to broadly publicize mediation as a means for resolving discrimination complaints and to encourage its use.

7. Adequacy of Discrimination Complaint Monitoring and Reporting

- (a) There is an effective departmental tracking system for informal complaints.**

Findings:

To determine the effectiveness of the informal discrimination complaint process, informal complaints must be accurately tracked and information reported to the SPB. Information reported in this report on informal discrimination complaints is not complete. In interviews with a number of departmental EEO officers, they stated they did not track informal departmental complaints. Several EEO counselors also reported they were not required to send counseling reports to their departmental EEO Office for tracking purposes.

Recommendation:

#43. The SPB promulgate a new regulation requiring departments to track informal discrimination complaints and report them to the SPB on a quarterly basis.

- (b) There is an effective departmental tracking system for formal complaints, including DFEH and EEOC complaints.**

Findings:

The SPB must primarily rely on departments to provide accurate information for its reports, yet staff must often revise the information in the SPB database to correct departmental reporting errors. At any point in time, the SPB staff cannot be sure that its discrimination complaint data is completely accurate. For instance, at the time the SPB prepared its *Report to the Legislature on Formal Departmental Discrimination Complaint Activity for calendar year 2000* in April 2001, the SPB database showed 577 individual complaints, with 943 multiple charges of discrimination. As of November 2001, there were 676 individual complaints, with 1,103 multiple charges of discrimination in our database. Ninety-nine complaints were not identified and reported to the SPB when they should have been during the 2000 reporting period. Departments need to improve the accuracy of tracking complaints and reporting the data the SPB.

Several departments are currently working on developing automated discrimination complaint tracking systems to improve their information. The SPB is also currently working on an automated, interactive, information system that, when complete, will allow departments to submit information about their discrimination complaints, directly to the SPB over the Internet.

Recommendations:

#44. The SPB promulgate a new regulation requiring departments to track formal discrimination complaints and report them to the SPB on a quarterly basis.

#45. The SPB work to complete its automated, interactive, Internet- based discrimination complaint tracking system, and that the SPB coordinate this effort with departmental efforts to improve tracking systems.

#46. The SPB provide additional training to departmental staff regarding how to properly report discrimination complaint information to the SPB.

(c) Discrimination complaint activity is reported promptly on a quarterly basis to the SPB.

Findings:

Although departments are sent instructions at the beginning of the calendar year to report formal discrimination complaints quarterly, a large number of departments do not routinely send the information to the SPB by the due date. In addition, information reported to the SPB is not always complete or accurate. Consequently, SPB staff spends a great deal of time calling departments to remind them to send the information or correct information. Interviews with EEO officers indicate that lack of staff resources, with competing priorities, is a large cause for this and other workload problems in their offices.

Recommendation:

#47. Departments review the adequacy of their resources for completing workload required by the SPB to prevent employment discrimination, provide equal employment opportunity, and to deal with discrimination complaints, and develop any needed budget change proposal to obtain needed resources.

(d) The SPB annually reports departmental discrimination complaint information to the Legislature.

Findings:

The SPB is required by statute to annually report to the Legislature on the number and type of formal discrimination complaints filed by state employees with their departments. Currently, there is no statutory or regulatory requirement to report on informal complaints or complaints filed with DFEH or EEOC. This means information reported to the Legislature does not give a complete picture of departmental discrimination complaint activity. This information should be included in the SPB report to the Legislature.

There is no date specified in the statute by which the report must be sent to the Legislature. Currently, information is reported on a calendar year basis, and the report is prepared by April of the following year. It is awkward to report data on a calendar year basis, when most other statistical reports are based on the fiscal year. It is not clear why discrimination complaint information has historically been reported this way. To change to a fiscal year reporting of information would require reprogramming the discrimination complaint information system, but would allow more flexibility for reporting discrimination complaint information on either a calendar year or fiscal year basis.

Recommendations:

#48. The SPB promulgate a new regulation mandating that departments report both informal and formal discrimination complaints and DFEH and EEOC complaints to the SPB on a quarterly basis.

#49. The SPB change its reporting of discrimination complaint data from a calendar year basis to a fiscal year basis to be consistent with its reporting of other employment data.

(e) The SPB regularly monitors department discrimination complaint processes.

Findings:

Government Code Section 19702.5 (c) requires the SPB to hold hearings every three years to assess the status of the state's discrimination complaint process and to make recommendations for improvement to the Legislature. Because of the lack of resources, the SPB has not done this since 1988. Although the SPB gathers and reviews data on the number and type of complaints in departments regularly, it does not have an on-going monitoring system of processes. A more practical approach, that would facilitate compliance with the statute, would be to assess the discrimination complaint process of a limited number of departments each year and have them make any needed improvements. This would spread out the workload and make it more manageable. Staff has found the very thought of being reviewed has motivated some departments to review and make improvements to their process on their own.

Recommendations:

#50. The SPB conduct on-site reviews of the discrimination complaint process in a limited number of departments each year and provide feedback on what improvements are needed.

#51. Departments include needed improvements to their discrimination complaint process in their EEO plan and see that they are implemented.

8. The SPB Discrimination Complaint Appeals Process

(a) The SPB processes and adjudicates discrimination complaint appeals on a timely basis.

When a state employee is not satisfied with his/her department's response to a discrimination complaint, he/she has the right to appeal that decision to the SPB. These appeals come to the SPB's Appeals Division for resolution. An appeal is first reviewed by Appeals Division staff to determine whether the SPB has jurisdiction to deal with the appeal, the appeal is timely, and the appellant has sufficient grounds (i.e., established a prima facie case) to proceed with the appeal. If these three tests are met, the appeal is scheduled for an evidentiary hearing before an administrative law judge (ALJ). Regardless of whether the appeal is accepted for hearing; however, the appellant is offered mediation to resolve the issues. At a hearing, the appellant has the right to representation and to call witnesses. The ALJ hears testimony from both the appellant and the respondent (department) and writes a proposed decision in the case. The decision is reviewed and is either approved or modified by the five-member State Personnel Board. Sometimes the parties agree to settle their differences before an ALJ has decided a case and a stipulation is prepared. Stipulations are approved by the executive officer.

During calendar year 2000, the SPB closed 136 discrimination complaints, including reasonable accommodation appeals, and in 1999, 157 cases. These included both evidentiary cases (i.e., those heard by an Administrative Law Judge) and non-evidentiary appeals (those evaluated by SPB staff). Unfortunately, although the database does allow for identifying complaints by the type of discrimination, this information, (with the exception of reasonable accommodation appeals) was not entered into the system and is not available. The average time taken by the SPB in 2000 to close a discrimination complaint appeal case was 163 days, well within the 180-days goal; however, reasonable accommodation cases averaged 247 days. In 1999, the average number of days to close a discrimination complaint appeal was 231 days, and 208 for reasonable accommodation appeals.

The table below shows the disposition of discrimination complaint appeals, including reasonable accommodation appeals for calendar years 1999 and 2000. In very few cases (5 in 2000, and 4 in 1999) did the SPB grant the appeal. Many cases were not accepted because the appellant did not adequately establish proper grounds for the appeal. This was due, in part, to a lack of knowledge about what is needed to show discrimination had occurred, and, in part, to not having access to employment information needed to support the allegations. (Note: Educating employees about what is required to support a complaint of discrimination and where to get information to support allegations of discrimination could be handled much earlier in the complaint process by EEO counselors or EEO office staff.)

Also, in a good number of cases, the appellant withdrew and did not complete the appeal.

**Summary of Decisions in Discrimination Complaints
Appealed to the State Personnel Board***

Case Decision	Calendar Year 2000		Calendar Year 1999	
	Granted	5	8.6%	4
Stipulated (Settled)	23	39.7%	20	48.8%
Denied or Dismissed	<u>27</u>	<u>46.6%</u>	<u>17</u>	<u>41.4%</u>
Total Case Decisions:	55	100.0%	41	100.0%

Summary of Actions Taken by SPB to Close Appeals*

Actions	Calendar Year 2000		Calendar Year 1999	
	Case Decided (See Above)	55	42.6%	41
Withdrawn	42	30.9%	47	29.9%
Not Accepted: (No Grounds, No Jurisdiction, or Not Timely)	<u>39</u>	<u>28.7%</u>	<u>69</u>	<u>43.9%</u>
Total Appeals Closed:	136	100.0%	157	100.0%

* Includes appeals of denial of reasonable accommodation.
Source: SPB ACTS database

Recommendations:

#52. The SPB's Appeals Division management ensures that discrimination complaint appeals are identified by type of discrimination alleged and that this information is entered into the ACTS database.

#53. The SPB's Appeals Division prepare quarterly reports on its decisions in discrimination complaint and reasonable accommodation appeals showing the disposition to facilitate monitoring by the SPB's Office of Civil Rights.

#54. The SPB's Appeals Division investigate why discrimination complaint appeals, and in particular, reasonable accommodation appeals, take longer than 180 days to complete and identify ways to reduce time to close cases.

#55. The SPB clarify, by statute or regulation, that statistical and other employment information needed to support a claim of discrimination is public information and that complainants must be granted access to this

information when requested. Such information would include, but would not be limited to, employment lists, bottom-line reports, and management information system reports.

9. Costs to the State to Resolve Discrimination Complaints

(a) Departments and the SPB track the resources and costs of handling discrimination complaints.

No one can dispute that discrimination complaints are costly. No one, however, can tell what the cost is to the state. Staff attempted to gather cost information on discrimination complaints from departments through its questionnaire. Departments were asked to identify their staff costs, including costs for counseling and conducting investigations, and the cost of litigation they were involved in, including attorney fees, settlements, and damage awards. The effort was only partially successful. Many departments indicated they did not track the costs. Others resisted developing information, saying the costs were confidential. Thirty-eight of the 89 departments (42.7%) made an effort to provide some information on their litigation costs, and 68 departments (76.4%) provided estimates of the cost of processing, counseling and investigating complaints. The SPB's cost to process and adjudicate discrimination complaints appealed to the SPB was \$200,000. The following reflects the cost information provided:

Estimate of Partial Discrimination Complaint Costs

Processing, Counseling and Investigating Costs	\$ 9.8 Million
Litigation Costs	\$26.9 Million
SPB Appeals Costs	\$.2 Million
Total:	\$36.9 Million

The partial estimate of the costs for discrimination complaints in 2000 is \$36.9 million. The actual amount is much higher, since the information collected is incomplete. The fact that cost information is not gathered and available for review by the SPB and the Legislature is a shortcoming of the current the state's discrimination complaint process that needs to be corrected. The state is accountable to the public for the use of public funds to resolve discrimination complaints. We need to know whether the funds are being spent effectively. We also need this information to support any new initiatives to eliminate discrimination in state service that require budget changes.

Recommendations:

#56. The SPB develop a statutory requirement that departments track the costs associated with their discrimination complaint activity and report the information to the SPB annually.

#57. The SPB's Appeals Division track the costs associated with departmental discrimination complaint activity and include this information in its report to the Legislature.

#58. The SPB include the costs associated with state discrimination complaint activity in its annual report to the Legislature.

IMPLEMENTATION OF RECOMMENDATIONS

As this report indicates, there are many aspects of the state discrimination complaint process that need to be improved to ensure that the process is fully effective, accessible and fair. The many recommendations made in this report will require a commitment of staff resources from departments and the SPB to properly implement. No attempt has been made, at this time, to assess the amount of resources needed and the extent to which additional resources may be needed. Because it is unlikely that sufficient resources are currently available to implement all recommendations at this time, the SPB needs to prioritize the recommendations and to work with departments to implement as many as possible within existing resources.