



# NEW FAIRTIMES

California Department of Fair Employment & Housing

January - June

2014

## DFEH REACHES NATIONWIDE SETTLEMENT WITH LAW SCHOOL ADMISSION COUNCIL



The California Department of Fair Employment and Housing (DFEH) reached a multimillion-dollar settlement in late May that prohibits the Law School Admission Council (LSAC) from discriminating against people with disabilities who take the Law School Admission Test (LSAT). Requiring reasonable accommodations for test takers with disabilities, the more than \$8 million agreement was a successful collaboration between state and federal civil rights agencies and legal aid organizations.

DFEH filed suit to halt ongoing harm to individuals with disabilities who sought to enter the legal profession. DFEH alleged that the Law School Admission Council (LSAC) which administers the Law School Admission Test (LSAT) subjected test takers who seek accommodations to onerous documentation requirements, denied requests for reasonable accommodations, and provided different and less desirable score reports for test takers who received the accommodation of additional test time.

The complaint against LSAC arose from a two year government investigation by DFEH which began in January 2010. Early in the investigation, Director Phyllis W. Cheng issued a Director's complaint alleging that LSAC denied reasonable accommodations to prospective test takers with disabilities. After the Director's complaint, the DFEH filed suit and then litigated the case in federal court in San Francisco. The United States Department of Justice joined in the suit which expanded the scope of the case and allowed for nationwide recovery.

The case was resolved by a settlement agreement (Consent Decree) which includes an \$8.73 million payment, of which \$6.73 million will be equally distributed to individuals nationwide who applied for testing accommodations on the LSAT from January 1, 2009 through May 20, 2014. The settlement was approved by the courts on May 29, 2014.

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### DFEH V. LSAC

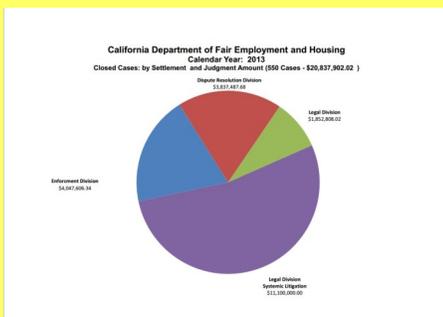


## FAIR EMPLOYMENT AND HOUSING COUNCIL APPOINTEES CONFIRMED



On April 2, 2014, the Senate Rules Committee unanimously confirmed Governor Brown’s appointees to the Fair Employment and Housing Council — Chairperson Chaya Mandelbaum, Patricia Perez, Andrew Schneiderman, Dale Brodsky, and Chanée Franklin Minor (from left to right, above). DFEH Director Phyllis Cheng is an ex officio member of the Council. The Council, established by SB 1038, is tasked with authoring and updating regulations to implement the Fair Employment and Housing Act (FEHA). Since its formation the Council has held six public hearings, the most recent on June 2, 2014 at the California Public Utilities Commission in San Francisco.

The Council has updated the regulations of the former Fair Employment and Housing Commission to the statutory changes made by Senate Bill 1038, and renumbered and relocated the regulations. The Council unanimously adopted Proposed Amendments to the California Family Rights Act Regulations (CFRA) — the first update since 1995 — and opened up the draft for public comment, with final comment on June 2, 2014. The CFRA subcommittee is amending the draft based on public comment, and voted to adopt its Draft Proposed Amendments to the Fair Employment and Housing Act Regulations. The Department will now prepare a rulemaking package for approval by Agency and the Office of Administrative Law, The Council has made progress on drafting regulations implementing the FEHA’s housing provisions, and should have a draft submitted for public comment by the year’s end.



2013—Closed cases by department

# DFEH TO LAUNCH NEW EDUCATION PARTNERSHIPS AND CIVIL RIGHTS CLINICS



UC Irvine School of Law



UC Davis School of Law



Pepperdine University



UC San Diego Extension



CSU Bakersfield



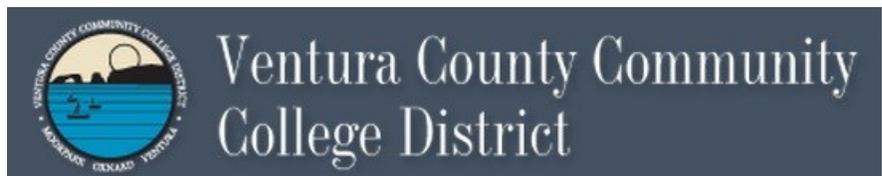
College of the Canyons



Rio Hondo College



In spring 2015, the Department will launch a new DFEH-Southwestern Law School Civil Rights Clinic on the Southwestern campus in Los Angeles. Like the Department's clinical programs with UC Irvine and Davis Schools of Law and Pepperdine University School of Law, this program will train law students on civil rights litigation, mediation and investigation.



In fall 2015, the Department will launch a new DFEH-Ventura County Community College District (VCCCD) Civil Rights Clinic. The new clinic, to be housed at Ventura College and open to all three VCCCD colleges (Ventura, Oxnard and Moorpark), will train community college students to create a pipeline into investigative jobs for the DFEH or other State agencies. It will focus on public policy, legislative and regulatory work. Similar to other DFEH programs, the clinical program will be taught free of charge by DFEH Legislative and Regulatory Counsel Brian Sperber. Ventura College will provide students, an office, classroom, furniture and access to campus amenities. It is hoped that the next phase would mean developing a rent-free DFEH district office on that campus.



DFEH-College of the Canyons Civil Rights Clinic Interns and DFEH Staff

# NOTABLE DFEH SETTLEMENTS



## Housing Settlements

*Dept. of Fair Empl. & Hous. v. Lan Nguyen* (Johnson), Alameda Superior Court Case No. HG13671528, housing—disability discrimination (failure to reasonably accommodate), \$40,000 in affirmative relief and attorney’s fees.

*Dept. of Fair Empl. & Hous. v. Horizon Capital Investments* (McBride), Sacramento County Superior Court Case No. 34-2013-00139350, housing—disability, failure to accommodate a companion animal, \$7,325 in affirmative relief and training for the respondents.

## Employment Settlements

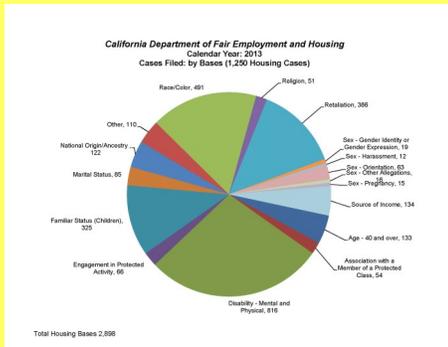
*Dept. of Fair Empl. & Hous. v. K-Designers* (Avelar), Case No. E-201112-E1382-00-pe, employment—disability discrimination, pre-litigation settlement of \$20,000 in compensatory damages, appointment to position originally sought, and affirmative relief in the form of employer practice modification. Reached in conjunction with settlement of *Dept. of Fair Empl. & Hous. v. Vocalcom* (Avelar), employment—aiding and abetting in discrimination; Unruh—disability discrimination, affirmative relief in the form of practice modification.

## Constitutional Challenge

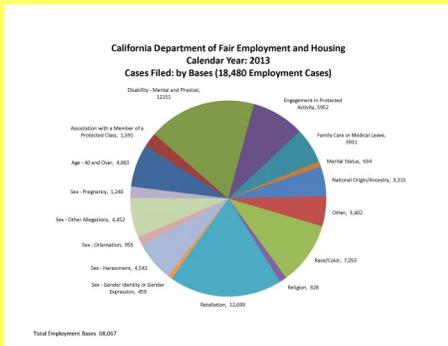
*Serrano v. Family, Life, Faith and Freedom Educational Corp and DFEH*, Ventura County Superior Court No. 52-2013-0047133, free exercis, establishment and equal protection clause.

**Summary:** Plaintiffs Lynda Serrano and Mary Ellen Guevara were terminated from their employment as kindergarten and preschool teachers at a for-profit religious school because they refused to sign a statement of faith. The school filed a cross-complaint against the DFEH for declaratory and injunctive relief on the basis that the FEHA is unconstitutional because its religious entity exemption only applies to *non-profit* religious entities rather than for-profit ones, like the school. The DFEH filed a motion for judgment on the pleadings challenging the constitutional claims and the school’s ability to seek declaratory relief in this case. The school voluntarily dismissed the cross-complaint before the hearing on the motion.

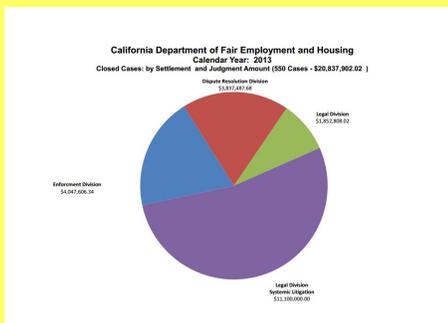
**Settlement:** Voluntary dismissal in exchange for a waiver of costs.



2013—housing cases filed



2013—Employment cases filed



2013—settlements and judgments

## NOTABLE DFEH CIVIL COURT JUDGMENTS

### Employment Judgments

*United Parcel Post v. Dept. Fair Employment & Housing (Mason)*, CA 4/3 G049493, employment—disability, award affirmed

Summary: The Court of Appeal, in an unpublished opinion, affirmed that the employer had unlawfully terminated the employee in violation of the Fair Employment and Housing Act because it discriminated against her based on a physical disability and failed to take all reasonable steps necessary to prevent discrimination from occurring.

Judgment: Judgment of Superior Court of Riverside County in favor of DFEH affirmed.

### Notable Cases Pending

*Department of Fair Employment & Housing v. American Pacific Corp.*, Sacramento County Superior Court Case No. 34-2013-00151153-CU-CR-GDS, employment—sex, gender, gender identity discrimination; failure to prevent discrimination; failure to take all reasonable steps to prevent discrimination.

Summary: The real party in interest (RPI) is a pre-transition transgender male. RPI presented as male to American Pacific Corp. (AMPAC) and received an employment offer. After accepting the position, he was required to complete background check forms and he disclosed to AMPAC's Human Resources department that he was in transition to male from his assigned gender at birth (female). He did not have any legal or medical documentation to reflect his gender change.

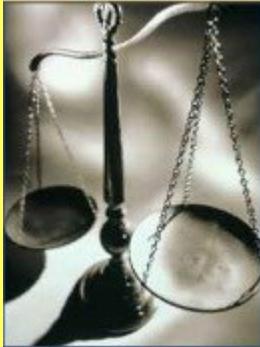
AMPAC expressed concern about RPI's use of the men's facilities. AMPAC asked RPI to delay his employment start date until after he had completed sex reassignment surgery. RPI explained that he had never been questioned about his use of men's facilities in previous employment. AMPAC requires RPI to use the female facilities until his gender transition was "complete" after surgery.

DFEH filed a complaint on behalf of RPI on September 9, 2013. AMPAC filed a demurrer, which was denied on all points by the Superior Court on March 13, 2014.

*Department of Fair Employment and Housing v. WinCo Foods LLC*, United States District Court, Northern District of California Case No.3:14-cv-00483-JST, employment—pregnancy disability discrimination (FEHA and the Americans with Disabilities Act (ADA))

Summary: Complainants are former employees of WinCo Foods who





because WinCo determined that they could no longer safely perform the full range of their job duties. DFEH filed a complaint alleging violations of the FEHA and the ADA through failure to accommodate or engage in an interactive process with the complainants. DFEH further alleged that the practice was part of a company-wide policy that has affected many similarly situated employees. WinCo brought a motion to dismiss the ADA claim; DFEH is still waiting on the result of this hearing.

## DFEH COMMUNITY INVOLVEMENT

### Fair Housing 101

In January 2014, DFEH, under a grant from the U.S. Department of Housing and Urban Development, produced new videos in their “Fair Housing 101” series, to educate Californians about their right to be free from discrimination in housing under the Fair Employment and Housing Act. The videos can be seen on the [Department’s YouTube channel](#).

### Webinars

DFEH continues to hold regular webinars, providing education on employment and housing laws and practices. These webinars are provided to the general public for MCLE and HRCI credit, and are free of charge to State of California employees. In 2014, the Department has hosted 7 DFEH webinars, and presented for multiple external webinars.



### Service Animals

Following a December, 2013 [article](#) on the state of the law on Service Animals in California, DFEH Director Phyllis Cheng [testified](#) before the Senate Committee on Business, Professions & Economic Development in their Hearing on Fake Service Dogs.

### Speaking Engagements

DFEH staff present at events throughout the year. For full calendars, follow the links below.

[January](#) commemorated Dr. Martin Luther King

[February](#) was Black History Month.

[March](#) was Women’s History Month.

[April](#) was Fair Housing Month.

[May](#) was Asian Pacific American Heritage Month.

[June](#) was LGBT Pride Month.



### Contact

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### Links

DFEH Web site:  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)  
FEH Council Web site:  
[www.dfeh.ca.gov/fehCouncil.htm](http://www.dfeh.ca.gov/fehCouncil.htm)  
BCSH Web site:  
[www.bcsH.ca.gov](http://www.bcsH.ca.gov)

### SUBSCRIBE OR UNSUBSCRIBE

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## DFEH IN THE NEWS

- LAW 360 [wrote an article](#) about DFEH's ultimately successful efforts to intervene in on behalf of the plaintiffs in an employment discrimination suit against WinCo Foods LLC, which is still pending. (Access limited to subscribers)
- Director Cheng's testimony regarding fake service animals and protections for service animal owners was covered [here](#).
- DFEH's transition to the cloud-based Houdini case management system was [featured in the Digital Journal](#) in March, 2014.
- Director Phyllis Cheng was profiled in Inside Counsel magazine's May 2014 cover story [State of Evolution: Inside the DFEH](#).
- Seyfarth Shaw [wrote on their blog](#) about DFEH's litigation of a workplace discrimination claim based on gender identity and gender expression.

