



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
304**

**DISTRIBUTION
DATE
October 1, 1998**

1. SUBJECT: INVESTIGATIVE WORK PLANS

2. PURPOSE: To set forth the procedures regarding the use of investigative work plans.

3. BACKGROUND: Case analysis is a crucial part of all Department of Fair Employment and Housing (DFEH) investigations. It is the process by which a Consultant analyzes and evaluates the information in the case file, determines what additional information is needed, and identifies the source of the information. The investigative work plan (IWP) is the tool that facilitates case analysis and enables a Consultant to properly plan an investigation.

4. PROCEDURES:

A. Guidelines for the Use of the Investigative Work Plan:

The following guidelines are to be used when completing an
Investigative work plan:

- 1) An Investigative work plan will be prepared on every case that requires an investigation. The Investigative Worksheet (DFEH-400-08) or an approved alternative format may be used for this purpose.
- 2) An IWP is to be completed as soon as possible after receipt of the response, but no later than three (3) months after the complaint filing date.
- 3) The IWP will be filed under the "Confidential" tab in the case file where it will be retained after the case is closed.
- 4) During case reviews, District Administrators will review the IWPs for all cases that are open more than 90 days. District

Administrators will initial the IWPs to indicate that they have completed their review of the investigative plan.

B. Format for Investigative Work Plans:

While the DFEH Investigative Worksheet (DFEH-400-08) is available, Consultants may use their own format as long as they:

- 1) Address every issue raised in the complaint.
- 2) Follow the "relevant question" analytical outlines contained in the Case Analysis Manual.
- 3) Summarize the information obtained from the respondent and complainant under the appropriate case analysis relevant questions. Such information should be obtained from the Pre-Complaint Questionnaire (PCQ), intake notes, documentation submitted by the complainant, the respondent's response and supporting documentation, and any witness interviews or witness statements contained in the file.
- 4) Identify the additional information that needs to be gathered and the source of the information.

NOTE: For a sample Investigative Worksheet that meets all of the above criteria, refer to Attachment 1.

5. APPROVAL:

Nancy C. Gutierrez, Director

Date

INVESTIGATIVE WORKSHEET

Case Name: HUNT/Smitty's Coffee Shop and Henry Woo

Case Number: E-9798-R-3282-00-se

Filing Date: 01/01/98 Consultant: J. Jones

I. **Jurisdiction:**

Not disputed.

II. **Discrimination:** Termination

Issue Question(s): Was Complainant terminated due to her age, 59?

Relevant Question: Did adverse action occur?

Evidence for Complainant

Complainant states she was terminated.
Did not provide copy of termination/lay off notice.

Need copy of lay off notice,
unemployment information from
Complainant.

Evidence for Respondent

Respondent states in response
Complainant laid off due to slow
down in business and
Complainant's ill health.
Respondent states unable to locate
any lay off notices.

Relevant Question: Is Respondent's reason factually accurate?

Evidence for Complainant

Evidence for Respondent

Complainant states younger waitresses hired after she was terminated. No work slow down. Complainant denies she was in ill health.

Need to contact new waitresses hired.
Need to contact Complainant's witnesses.

Respondent states business slow down and ill health of Complainant. Respondent does not provide any business records nor medical evidence to support.

Respondent has also provided a witness statement (Lawrence Tail) indicating wage was not a factor in termination.

Need business records for previous three months. Need copy of any medical documents. Respondent provided telephone numbers for waitresses laid off. Respondent has knowledge of others who can confirm Complainant's ill health.

Relevant Question: Does Respondent's treatment of similarly situated employees indicate termination due to age?

Evidence for Complainant

Complainant provided names of other waitresses laid off at approximately the same time who she states are all over forty (Adeline Keen, Jackie Kuffel, Jackie Weyant, and Connie).

Respondent in response provided a list of all waitresses laid off at the approximate time as Complainant, all were over the age of fifty.

Need to contact other witnesses laid off.

Evidence for Respondent

Respondent has not provided any information to indicate that any other waitresses besides those over fifty were laid off.

Respondent indicates that he currently employs six employees over the age of forty but does not indicate in what capacity.

Need confirmation from Respondent of employees over the age of forty, what capacity they are employed in and date of hire.

Relevant Question: Does application of Respondent's lay off policy indicate age bias?

Evidence for Complainant

Complainant not aware of how decision was made.

Evidence for Respondent

Respondent has stated no lay off policy.

Need from Respondent criteria for lay off.

Need from Respondent persons retained, age, and reason for retaining.

Relevant Question: Does the manner in which Complainant was replaced indicate termination due to age?

Evidence for Complainant

Respondent in response provided the names of three waitresses hired after Complainant was laid off, all of whom were under the age of forty. One, Trina Hoagy, 33, was hired the day after Complainant was laid off.

Evidence for Respondent

Need copy of application/ confirmation of hire date, date of birth from Respondent. Need to contact new employees.

Relevant Question: Does the relevant statistical pattern indicate that Complainant's age was a factor in her termination?

Evidence for Complainant

Ask Complainant for any information regarding statistical pattern of other waitresses laid off.

Evidence for Respondent

Need number of waitresses laid off and age of each. Need number and ages of waitresses retained.

III. **Affirmative Defenses:** None

IV. **Remedy:**

Complainant seeks lost wages for the period of time during which she was unemployed from 10/15/97 until employment. She states she is currently making \$300.00 per month. She indicates her previous wages were \$600.00 per month. Complainant is unsure of reinstatement. The complainant is also seeking compensatory damages because ...