

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST
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Policy Analysis Report

To: President Walton and Supervisor Peskin
From: Budget and Legislative Analyst's Office
Re: Benchmarking Survey of Equal Employment Opportunity Offices
Date: January 27, 2021

Summary of Requested Action

In response to a hearing request (File 20-1105), the Budget and Legislative Analyst has conducted a comparative analysis of Equal Employment Opportunity offices in other jurisdictions, including organizational placement and oversight.

For further information about this report, contact Severin Campbell at the Budget and Legislative Analyst's Office.

Executive Summary and Policy Considerations

- San Francisco's Equal Employment Opportunity (EEO) and Leave Management Office investigates allegations of discrimination, harassment, and retaliation, provides staff trainings, provides reasonable accommodation for individuals with disabilities, and establishes citywide leave management policies and protocols.
- Under the provisions of San Francisco's Charter Sections 10.101 through 10.103, the Human Resources Director is responsible for reviewing and resolving allegations of discrimination against employees and applicants. The Human Resources Director's decision is considered final unless the decision is appealed to the Civil Services Commission.
- For eight of the twelve cities in our survey, the EEO Office was located within the human resources/ personnel department as is the case in San Francisco, although three cities located the EEO Office within the city manager/city administrator office. Only the city of Phoenix had a stand-alone EEO department.
- The City of San Francisco's EEO advisory and appeals process is more structured than most of the other cities in the survey. Only two of the other cities in the survey reported a formal appeals process, and only two other cities reported an advisory body with specific EEO responsibilities.

Policy Considerations

- The survey did not identify a specific organizational placement of the EEO Office that would foster increased oversight and accountability. Key considerations in the organizational placement of the office include the Department's ability to be neutral and independent in its investigations of EEO complaints as well as its expertise regarding the City's hiring and disciplinary policies and practices.

Budget and Legislative Analyst

- EEO reporting and oversight could be increased within the City's existing organizational structure. The EEO Office produces quarterly and annual reports on sexual harassment complaints but does not produce any regular reports on EEO complaints more broadly, or produce reports to monitor complaints on racial and other discrimination. In comparison, the City's Administrative Code gives authority to the Commission on the Status of Women to monitor complaints of discrimination against women. The Board of Supervisors could consider amending the City's Administrative Code to provide authority to monitor discrimination-based complaints for protected classes to the Human Rights Commission and require reporting on racial discrimination complaints and race-based claims, lawsuits, and settlements.

Project staff: Mary Lindeblad-Fry, Christina Malamut, Severin Campbell

Overview of San Francisco’s Equal Employment Opportunity Office

Services

Through direct service provision to City departments, San Francisco’s Equal Employment Opportunity (EEO) and Leave Management Office investigates and makes findings on employee and applicant allegations of discrimination, harassment, and retaliation, establishes citywide leave management policies and protocols, and works with City Departments to ensure that reasonable accommodations are provided to individuals with disabilities.

Discrimination, Harassment, and Retaliation Prohibited

Discriminating against or harassing City employees, applicants, or contractors because of their sex, race, age, or other¹ legally protected category is prohibited and unlawful.² Discrimination is defined as the unequal treatment of individuals based on their membership in a protected category, and harassment is “unwelcome visual verbal, or physical conduct engaged in on account of” an individual’s membership in a protected category.³ In addition, sexual harassment is prohibited under federal and state law. Retaliation against an individual who reports discrimination, harassment, or retaliation, or assists in the investigation of a complaint, is prohibited.

Oversight and Organizational Structure

Under the provisions of San Francisco’s Charter Sections 10.101 through 10.103, the Human Resources Director is responsible for reviewing and resolving allegations of discrimination against employees and applicants. The Human Resources Director’s decision is considered final unless the decision is appealed to the Civil Service Commission. The Civil Service Commission reviews and resolves complaints of employment discrimination appealed to it pursuant to procedures established by the Executive Officer in accordance with Rule 104, Section 104.4.5. The determination reached under Commission procedures is final.

In accordance with terms set forth by the City Charter, the Human Resources Director is selected by the Mayor from a pool of candidates nominated by the Civil Service Commission and approved by the Board of Supervisors. The Civil Service Commission consists of five members appointed by the Mayor for six-year terms.

Department of Human Resources

The Department of Human Resources (DHR) provides centralized human resources services for City Departments including equal employment opportunity and employee leave oversight, as well as classification and compensation management, Workers’ Compensation, workforce development, administration of civil service examinations, labor relations, and coordination of the City’s human resources diversity, equity, and inclusion efforts. Human

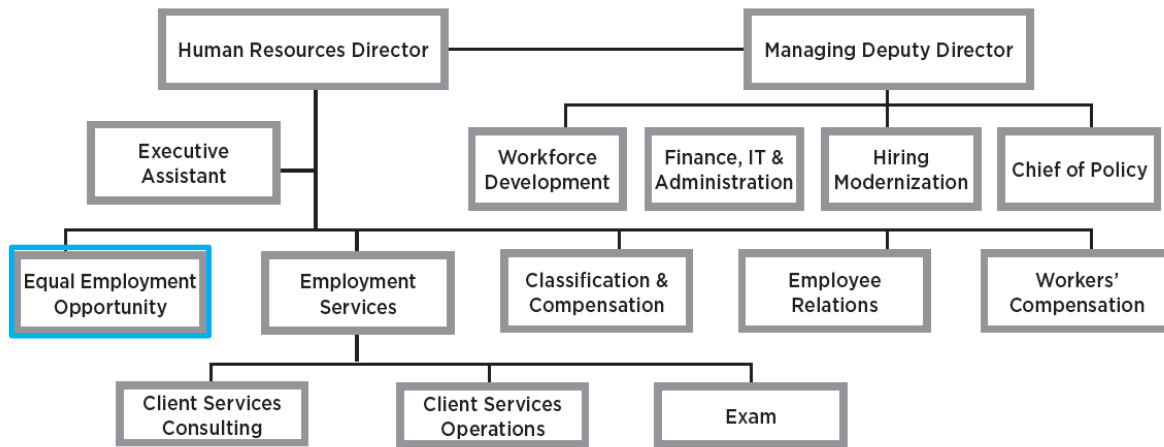
¹ According to the City’s EEO policy, other protected categories under the law include “religion, color, national origin, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, sexual orientation, gender, gender identity, gender expression, military and veteran status, or other.”

² City and County of San Francisco Equal Employment Opportunity (EEO) Policy, Revised September 2017.

³ Ibid.

Resources also negotiates and administers the collective bargaining agreements between the City and labor organizations. Exhibit 1 below shows the Department’s organization chart.

Exhibit 1: Human Resources Organization Chart*



Source: FY 2019-20 and FY 2020-21 Mayor’s Proposed Budget Book

Note: * A new “Diversity, Equity & Inclusion” team was added in FY 2019-20 under the Human Resources Director, which is not reflected in the chart above.

EEO Office Organization

The EEO Office is divided into two sections, one that conducts EEO investigations and a second section responsible for leave management. There are three managers within EEO who report to the EEO Office Director, and the EEO Office Director reports to the Human Resources Director. The EEO Office Organizational Chart is provided in Appendix A.

In addition, three departments have their own EEO offices, including the Department of Public Health, the Airport, and the Public Utilities Commission, that also conduct EEO investigations. These offices and investigations are operated under Delegation Agreements, as final determinations rest with the Human Resources Director, as described above. Exhibit 2 below shows the funded full-time equivalents (FTEs) in each of these departments as of FY 2019-20.

Exhibit 2: EEO Funded FTEs in Four Departments, FY 2019-20

| Department | Division | FY 2019-20 Funded FTEs |
|-----------------------------|----------------------------------|------------------------|
| Human Resources | EEO & Leave Management | 26.18 |
| Public Health | EEO & Cultural Competency | 8.54 |
| Airport | EEO Compliance & Training | 7.00 |
| Public Utilities Commission | EEO Programs & ADA/FEHA Programs | 2.00 |
| Total | | 43.72 |

Source: Positions Reports and Department Organizational Charts

Budgeted Expenditures and Positions

The EEO Office’s FY 2019-20 total original budget was \$4,865,372, which has increased by 87.2 percent (\$2,266,285) since FY 2015-16. The EEO Office’s funded positions increased by 70.3 percent over this period from 15.37 FTEs in FY 2015-16 to 26.18 FTEs in FY 2019-20. The number of EEO complaints increased from 581 in FY 2015-16 to 605 in FY 2017-18 and then declined to 449 in FY 2019-20. Exhibit 3 below shows a summary of the office’s five-year historical expenditures, funded FTE positions, and number of complaints.

Exhibit 3: 5-Year Historical Budgets and Funded FTEs

| Fiscal Year | Complaints* | Original Total Budget | Funded FTEs |
|--------------------|--------------------|----------------------------------|--------------------|
| FY 2015-16 | 581 | 2,599,087 | 15.37 |
| FY 2016-17 | 461 | 3,169,536 | 18.81 |
| FY 2017-18 | 605 | 3,605,114 | 20.73 |
| FY 2018-19 | 579 | 4,370,593 | 24.81 |
| FY 2019-20 | 449 | 4,865,372 | 26.18 |
| 5-Year Change | (132) | 2,266,285 | 10.81 |
| 5-Year % Change | -22.7% | 87.2% | 70.3% |

Sources: Annual Appropriation Ordinances and Positions Reports, EEO Office

*Does not include complaints filed externally with the U.S. Equal Employment Opportunity Commission and the California Department of Fair Employment and Housing

EEO Complaint & Investigation Procedures

EEO Complaints

According to the City’s EEO Policy, employees or applicants who believe they have been discriminated against, harassed, or retaliated against can report the incident to any of the following parties within the City: (1) their supervisor or any other supervisor or manager; (2) their department’s EEO or Human Resources personnel; (3) the City’s Department of Human Resources, EEO Division; or (4) the City’s EEO telephone helpline. Complaints must be filed within 180 days of the incident or the date the individual became aware of the violation. Supervisors must immediately report complaints to their department’s EEO or Human Resources personnel, and departments must report all complaints to the Human Resources Director within five days. In addition, employees or applicants can also file a complaint externally with the U.S. Equal Employment Opportunity Commission and the California Department of Fair Employment and Housing.

If the Human Resources Director finds that an employee has violated the City’s EEO Policy, the employee may be subject to counseling, training, or disciplinary action and the complainant may receive a make whole remedy.

EEO Investigations

DHR’s EEO Office reviews all complaints received and determines if an investigation is needed. If the EEO Office determines that an investigation is needed, they may refer the complaint back to the department if the complainant’s department has their own EEO office or will proceed with the investigation. Management staff report that complaints filed against

Human Resources employees may be referred outside of DHR to eliminate any conflict of interest, to the City Attorney, a private law firm, or the DPH, Airport, or PUC EEO offices to conduct the investigation, but this protocol is not documented.

The Human Resources Director makes the final determination on all complaints with the exception of SFMTA complaints which are determined by the Director of Transportation.

Appeals

Complainants may appeal EEO determinations made by the Human Resources Director to the Civil Service Commission. Appeals must be filed within 30 days of notification of the Human Resources Director's determination.

Survey of EEO Offices

Jurisdictions and Methodology

To understand how San Francisco's EEO Office compares to other jurisdictions, we surveyed 12 cities regarding their organizational placement and general oversight. Our survey includes cities in the western United States with populations of at least 500,000 plus some additional cities in California with populations of at least 400,000. We reviewed publicly available information from the cities' EEO websites and budget documents and interviewed EEO staff in nine of the 12 cities. The remaining three cities did not respond to our requests for interviews.

Oversight and Organizational Placement

Among the cities surveyed, the two most common organizational placements of EEO offices were within the Human Resources/Personnel Department or under the City Manager/Administrator. Of the twelve cities surveyed, eight have EEO offices located under their Human Resources or Personnel Department, three have EEO offices located under either the City Manager or City Administrator's Office, and one (the City of Phoenix) has a stand-alone EEO department. Organizational placement for the twelve surveyed cities and San Francisco is shown below in Exhibit 4.

Exhibit 4. Organizational Placement of EEO Offices in Other Jurisdictions

| City | Organizational Placement | EEO Lead Reports to | Appeals to |
|----------------------|---|---------------------------------|---------------------------------|
| Fresno | Personnel Services | Personnel Services Director | No formal appeals process |
| Las Vegas | Human Resources Department | Director of Human Resources | * |
| Long Beach | Human Resources, Personnel Operations | Human Resources Director | No formal appeals process |
| Los Angeles | Personnel Department | Assistant General Manager | Civil Service Commission |
| Oakland | City Administrator | City Administrator | No formal appeals process |
| Phoenix | Equal Opportunity Department (Stand-alone department) | Deputy City Manager | No formal appeals process |
| Portland | Bureau of Human Resources | Human Resources Director | No formal appeals process |
| Sacramento | Human Resources, Labor Relations Division | Human Resources Director | No formal appeals process |
| San Diego | Personnel Department** | Civil Service Commission | Civil Service Commission |
| San Francisco | Human Resources | Human Resources Director | Civil Service Commission |
| San Jose | City Manager*** | City Manager | No formal appeals process |
| Seattle | Department of Human Resources/Office of Civil Rights | Human Resources Director | No formal appeals process |
| Tucson | City Manager | Assistant City Manager | * |

Source: EEO office websites and interviews with EEO office staff

*We were unable to interview EEO staff from the City of Tucson and the City of Las Vegas or find information on an appeals process on their websites

**The City of San Diego’s Personnel Department, which is under the city’s Civil Service Commission, is functionally separate from its Human Resources Department, which is under the Mayor.

***The City of San Jose’s Office of Employee Relations, which is located within the Office of the City Manager, is functionally separate from its Human Resources Department. However, the Office of Employee Relations and the Human Resources Department have the same director as of January 2021.

Oversight of EEO Investigations

For most jurisdictions surveyed, EEO investigations are conducted by analysts within their EEO office and overseen by the EEO office director. However, for one of the surveyed cities, Portland, human resources staff embedded within each department conduct investigations and report their findings to the City’s Bureau of Human Resources.

In some jurisdictions, other parties are involved in the investigative process. For example, in Long Beach, the City Attorney reviews all complaints received and determines how they should be handled. While the Human Resources Director provides input into this process, the City Attorney makes the final determination on whether or not to proceed with an investigation.

Additionally, in several cities surveyed, EEO staff reported that EEO investigations are outsourced in situations where there is potential for a significant conflict of interest, such as if a complaint is made within the EEO office or within Human Resources, or if there is a complaint made about an elected official, or if it is determined that the investigation will be too time-consuming for the EEO office to handle.

Appeals

Most of the jurisdictions surveyed do not have a formal EEO appeals process although several EEO staff interviewed cited informal appeals processes where a closed case may be reviewed again internally upon request and most jurisdictions have processes for employees to appeal disciplinary action recommended as a result of an EEO investigation. San Francisco and two of the cities we surveyed have formal EEO appeals processes that provide an avenue for the complainant (or other party) to appeal a closed EEO investigation, including Los Angeles and San Diego. However, in the City of Los Angeles, complainants can only appeal the *closure* of the complaint and not the findings.

Role of Advisory Bodies

Two of the twelve cities we surveyed had advisory bodies with specific EEO oversight responsibilities, primarily regarding hearing appeals of EEO complaints. In two cities (Los Angeles and San Diego), the Civil Service Commissions hear appeals of EEO complaints. A summary of the role of advisory bodies is provided in Exhibit 5 below.

Exhibit 5. Role of Advisory Bodies in Other Jurisdictions

| City | Name of EEO Advisory Body | Primary EEO Responsibilities | Staffing |
|---|----------------------------------|-------------------------------------|--|
| <i>Cities with EEO Advisory Bodies</i> | | | |
| Los Angeles | Civil Service Commission | Hears appeals on case closure | 5 members, appointed by Mayor and confirmed by City Council |
| San Diego | Civil Service Commission | Hears appeals | 5 members, appointed by Mayor and confirmed by City Council |
| San Francisco | Civil Service Commission | Hears appeals | 5 members, appointed by Mayor and confirmed by Board of Supervisors |
| <i>Cities without EEO Advisory Bodies (or Unknown)</i> | | | |
| Fresno | N/A | | |
| Long Beach | N/A | | |
| Oakland | N/A | | |
| Phoenix | N/A | | |
| Portland | N/A | | |
| Sacramento | N/A | | |
| San Jose | N/A | | |
| Seattle | N/A | | |
| Las Vegas | * | | |
| Tucson | * | | |

Source: EEO office websites and interviews with EEO office staff

* We were unable to interview EEO staff from the City of Tucson and the City of Las Vegas or find information on EEO advisory bodies on their websites

Sacramento County Equal Employment Opportunity Advisory Committee

Although our benchmarking survey was limited to cities, we also identified an EEO-specific advisory body in Sacramento County. The Equal Employment Opportunity Advisory (EEOA) Committee in Sacramento County is primarily involved in developing and advising on policies related to hiring practices and recruitment activities, however they may provide input on how EEO complaints are handled according to Sacramento County EEO staff. The committee consists of fifteen members appointed by the Sacramento County Board of Supervisors. The committee includes seven citizen members, who apply to serve on the committee, four County department heads appointed from nominations submitted to the Board of Supervisors by the County Executive, and four representatives from employee organizations who have been nominated by their organizations. In addition, the EEOA Committee receives annual reports on discrimination complaints and their outcomes by department.

Summary

San Francisco's Equal Employment Opportunity Office organization, oversight structure, and appeals process are consistent with many of the comparable cities in our survey. For eight of the twelve cities in the survey, the EEO Office was located within the human resources/personnel department as is the case in San Francisco, although three cities located the EEO Office within the city manager/city administrator office. Only the city of Phoenix had a stand-alone EEO Office. As noted below, the organizational placement of the EEO Office in the human resources/personnel department or outside of human resources (i.e. in the city manager/city administrator's office or as a stand-alone department) has comparative advantages and disadvantages.

The City of San Francisco's EEO advisory and appeals process is more structured than most of the other cities in the survey. Only two of the other cities in the survey reported a formal appeals process, and only two other cities reported an advisory body with specific EEO responsibilities (civil service commissions).⁴

The survey was conducted in response to a hearing request by members of the Board of Supervisors to consider the restructuring and reforming of the EEO Office. Also pending before the Board of Supervisors is a resolution urging the Department of Human Resources EEO Office to collaborate with the Office of Racial Equity at the Human Rights Commission on investigating EEO complaints. The pending resolution noted the letter from the Director of Human Resources, which listed accusations pertaining to forgery, fraud, and corruption through the EEO Office committed by a former Department of Human Resources manager, who unexpectedly resigned. According to the pending resolution, these fraudulent actions were committed without oversight or accountability from the administration of the Department of Human Resources.

Policy Considerations

Organizational Placement

The survey did not identify a specific organizational placement of the EEO Office that would foster increased oversight and accountability. The benchmarking survey shows that placement within the Human Resources Department is common in other cities, but the most common alternative placement would be under the City Administrator's Office. Based on our interviews with EEO staff in other cities, key considerations in the organizational placement of the office include the Department's ability to be neutral and independent in its investigations of EEO complaints as well as its expertise regarding the City's hiring and disciplinary policies and practices. One of the main stated strengths in our survey of having the EEO office located under Human Resources is the Department's expertise regarding civil service rules and discipline. One of the primary stated benefits of having the EEO office located outside of Human Resources (such as under the City Manager/Administrator or as a

⁴ As noted above, the cities of Tucson and Las Vegas did not respond to a request for an interview, and therefore, we were not able to identify if Tucson and Las Vegas have formal appeals processes or advisory bodies.

stand-alone department) include the perception of the EEO office by employees as neutral and independent, which helps to generate trust in the process. Relocating the EEO Office from the Department of Human Resources to the City Administrator's Office or as a stand-alone department would require a revision to the City's Charter.

Reporting and Oversight

The Board of Supervisors could amend the Administrative Code to increase EEO monitoring, reporting, and oversight within the City's existing organizational structure. The EEO Office produces quarterly and annual reports on sexual harassment complaints but does not produce any regular reports on EEO complaints more broadly, or produce reports to monitor complaints on racial and other discrimination. In comparison, the City's Administrative Code gives authority to the Commission on the Status of Women to monitor complaints of discrimination against women.

Reports on Discrimination Against Women

The City's Sexual Harassment Policy (Administrative Code Section 16.9-25) requires that the Department of Human Resources provide de-identified quarterly reports on sexual harassment complaints to the Commission on the Status of Women, including the number of complaints filed, the departments involved, the disposition of complaints that are concluded, and the status of pending complaints. In addition, Human Resources is required to provide de-identified annual reports to the Mayor, the Board of Supervisors, the Human Rights Commission, and the Commission on the Status of Women on sexual harassment complaints by department.

Under Administrative Code Section 33.4, the Commission and Department of the Status of Women are given the authority to "[monitor] the reports of complaints of all forms of discrimination against women (including sexual harassment) [...] and consult with and make recommendations to the Department of Human Resources concerning the handling of such complaints." The Department of the Status of Women reviews reports provided by the Department of Human Resources as well as the City Attorney's Office on discrimination against women (described below) and publishes these reports to its website.

In addition, Administrative Code Section 33.7 requires the City Attorney to submit a quarterly report of settlements of lawsuits and claims filed by female employees alleging employment discrimination, including the name of the case or claimant, the nature of the case, the alleged damages suffered, and the amount of the settlement.

Potential Role for the Human Rights Commission to Monitor EEO Complaints

The Human Rights Commission (HRC) could play a larger role in monitoring and reporting EEO complaints. HRC, which was established in 1964, investigates complaints of discrimination in employment, housing, and public accommodation; collaborates with other governmental agencies and community-based organizations to address civil rights and social justice issues; and conducts community engagement to build capacity in advocacy, education, and outreach. The HRC's Office of Racial Equity was established by ordinance in 2019 to address racial inequities in San Francisco and promote equitable outcomes for all communities. The Office of Racial Equity has the authority to establish a citywide Racial

Equity Framework, direct departments to develop required Racial Equity Action Plans, analyze the disparate impacts of pending legislation, as well as perform other reporting and policy functions.⁵

As mentioned above, a pending resolution before the Board of Supervisors would urge the Department of Human Resources EEO Office to collaborate with the Office of Racial Equity at the Human Rights Commission on investigating EEO complaints. One potential opportunity for collaboration between the two departments would be for the Human Rights Commission to monitor discrimination-based EEO complaints for protected classes and make recommendations to the Department of Human Resources on how these complaints are handled, and require reporting on racial discrimination complaints and race-based claims, lawsuits, and settlements to the Office of Racial Equity. According to HRC staff, the HRC may require additional resources, including staff, to support this work.

The Board of Supervisors could amend the City's Administrative Code to provide authority to monitor discrimination-based complaints for protected classes to the Human Rights Commission and require reporting on racial discrimination complaints and race-based claims, lawsuits, and settlements.

⁵ Ordinance 188-19

Appendix A: Equal Employment Opportunity Office Organizational Chart

