



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING**

***ENFORCEMENT DIVISION
DIRECTIVE***

**DIRECTIVE NUMBER
111**

**DISTRIBUTION DATE
July 29, 2014**

**1. SUBJECT: ISSUES FOR REVIEW, APPROVAL, DIRECTION, OR ADVICE
BY THE CHIEF COUNSEL**

2. PURPOSE: To identify issues requiring review, approval, or advice of the Chief Counsel and provide the mandatory procedure to be followed in such cases.

3. RESPONSIBILITIES:

A. DIVISION CHIEFS:

- 1) It is the responsibility of all division chiefs to ensure that all legal issues relating to administrative operations of the Department, including, but not limited to, issues relating to personnel, hiring, promotion, employee discipline, reasonable accommodations, duty statements, labor issues, information security issues, fiscal, and conflicts of interest are presented to the Chief Counsel of the Legal Division for independent review, approval, and/or direction.
- 2) The division chiefs are expected to comply with requests for additional information and/or direction and advice provided by the Chief Counsel or his/her designee and may not proceed further without the written consent and approval of the Chief Counsel.
- 3) The Chief Counsel may not be bypassed and the division chiefs may not rely on legal advice provided by any other person, except for state control agencies as set forth below, without the express, written consent of the Chief Counsel. If the division chief disagrees with the decision of the Chief Counsel, the division chief shall follow the procedure below and seek further review by the Director.

B. CHIEF COUNSEL:

- 1) Upon being presented with legal issues by a division chief, the responsibility of the Chief Counsel or his/her designee is to thoroughly review the issue, including conducting legal research and/or requesting additional information. After completing independent review and analysis, the Chief Counsel shall promptly

provide, in writing, a summary of the direction, advice, or recommendations resulting from his/her review and analysis.

- 2) If the Chief Counsel identifies a conflict of interest, the Chief Counsel shall identify independent persons to review and analyze the issue and act in place of the Chief Counsel. Other than identifying such independent persons, the Chief Counsel shall have no further role in analyzing or reviewing the issue(s) presented.
- 3) If the Chief Counsel's independent review does not result in a definitive answer to the issue, the Chief Counsel shall advise that any applicable control agency, including, but not limited to, the State Personnel Board, Department of Finance, State Controller, CalHR, and/or the Department of General Services be consulted prior to proceeding. Nothing in this directive precludes a division chief from consulting with a control agency prior to presenting the matter to the Chief Counsel. However, any such direction provided by a control agency shall be reduced to writing and a copy shall be promptly provided to the Chief Counsel for future reference.

C. REVIEW OF THE DECISION OF THE CHIEF COUNSEL:

- 1) If a division chief disagrees with the direction and/or analysis of the Chief Counsel, the division chief must first discuss the disagreement with the Chief Counsel in an effort to resolve the matter. If the Chief Counsel agrees to change or modify the analysis and recommendation, the Chief Counsel shall provide a new writing explaining the change and authorizing the division chief to proceed. If the Chief Counsel does not agree to change his/her position, the division chief shall provide a written summary of the disagreement to the Director. The Director may then discuss the matter with those involved and resolve the disagreement, which shall be binding.

5. APPROVAL:



July 29, 2014

Phyllis W. Cheng, Director

Date