County of Los Angeles Policy of Equity Program

International Municipal Lawyers Association's 82nd Annual Conference

Niagara Falls, Canada - October 2017

Mary C. Wickham
County Counsel
County of Los Angeles

Lawrence L. Hafetz
Chief Deputy County Counsel
County of Los Angeles

Rosemarie Belda
Senior Assistant County Counsel
County of Los Angeles

Camille Y. Townsend
Assistant County Counsel
County of Los Angeles

Mary C. Wickham



- Los Angeles County Counsel.
- Began working as an attorney for County Counsel in 1995.
- 15th County Counsel and second woman to hold the position.
- Has advised on employment law and civil service matters.
- Lead County Counsel attorney on *Bouman v Baca* gender discrimination case.
- Responsible for development and implementation of CEOP.
- Bachelor of Arts in Public Administration from University of Southern California.
- Juris Doctor from Whitter College School of Law where she served as Managing Editor of Whittier College Law Review.

Lawrence L. Hafetz

- Chief Deputy County Counsel.
- Has worked for County Counsel since 1994.
- Advised on all real-estate and property-related matters for the County as well as tax-related matters and litigation.
- Worked on a number of gun-control measures for the County.
- Graduated from Wesleyan University and University of Michigan Law School.

Rosemarie Belda



- Senior Assistant County Counsel.
- Ms. Belda has worked for County Counsel since 1991.
- She has advised on juvenile dependency, child welfare, health care, public health, and employment, as well as drafting a variety of legislation.
- Ms. Belda is the current legal advisor to the County Equity Oversight Panel.
- Rose graduated from Santa Clara University and Berkeley (Boalt Hall) School of Law.

Camille Y. Townsend



- Assistant County Counsel.
- Previously, Acting Executive Director of the County Equity Oversight Panel and Assistant Executive Officer of the Executive Office of the Board of Supervisors.
- Previously worked as Deputy County Counsel.
- Experienced in counseling and representing public and private sector employers in all aspects of employment and has conducted trainings on litigation avoidance.
- Graduated from Boston College.
- Received her law degree from University of Wisconsin.

CPOE Program

Six Years and Going Strong

Adopted by the Board of Supervisors and effective July 1, 2011, the CPOE celebrated the end of six years in operation on July 1, 2017.

The CPOE was designed to address and prevent workplace harassment, discrimination, retaliation, and inappropriate conduct toward others (ICTO), with the idea that inappropriate workplace behaviors can be prevented or stopped at the soonest possible time. The CPOE only addresses matters rooted in **EQUITY**/protected categories under State and Federal law.

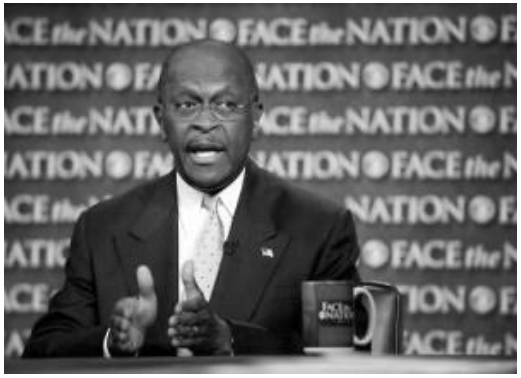
Three particularly unique features of the CPOE are:

- The Inappropriate Conduct Toward Others (ICTO) standard.
- An independent panel of employment lawyers reviews each case.
- Supervisors and Managers are mandated reporters.

Harassment and Discrimination Issues and Lawsuits are **Hot Topics** in Today's World.



Anthony Weiner on Scandal:
“I’m very sorry” for “dishonorable actions…”



Cain campaign **denies sexual harassment report**



Paula Deen **admitted to using a racial slur but stated she “Doesn’t tolerate hate.”**



Harvey Weinstein



Roger Ailes



Billy Bush lost his job



Google Engineer

“Women’s brains aren’t the same.”

And who could forget these?







Sobering Statistics

California Statistics

- Employee lawsuits have risen approximately 400% over the last 20 years.
- When employee lawsuits go to trial, the employee wins more than 63% of the time.
- The average cost to settle an employee lawsuit out of court is $75,000.
- The average amount awarded to employees in jury trials for employment matters is $217,000.
- In California, employers have a 40% higher chance of being sued for an employment related matter than the national average.
- Based on the UCLA-RAND study, verdicts for race and national origin discrimination tended to be at the higher end; discrimination for medical conditions and sexual orientation tended to be on the higher end.

Sobering Statistics

County Statistics

- Of the 36 County Departments (under the CPOE), since 2004, 30 Departments (or 83%) have had employment-related litigation. (This does not include employment-related litigation pursued by non-County individuals.)
- Of the 30 Departments who have been sued by County employees in employment litigation, they have spent an average of $88,008 in fees and costs per case since 2004. They have spent an average of $123,825 in judgments and settlements per case since 2004. (These figures exclude the Sheriff's Department.)

Remember:
All it takes is one!

“Los Angeles County Social Worker Receives $1,583,844 in Retaliation Jury Verdict Win.”

www.baattorneys.com

Social Worker filed a lawsuit against the County for “unlawful termination.”

Although the discharge was ultimately upheld, the Social Worker successfully sued the County for retaliation (for having previously complained of discrimination).

After a jury trial, the Social Worker was awarded $1,583,844 in compensatory damages.

Legal Duty to Investigate

Aside from doing the right thing, employers are required by law to remedy workplace discrimination and/or harassment by investigating complaints and, when necessary, taking prompt remedial action.

Legal Duty to Investigate

Employers are under a duty to investigate and to take immediate and appropriate corrective action once they have reason to know that harassment or discrimination may be taking place. *Cal. Govt. Code sections 12940(h), (j)(1) and (k); Cal. Code Regs. Tit. 2, § 7287.6(b)(3).*

The court *in Northrop Grumman Corp. v. Workers' Comp. Appeals Bd. (2002) 103 Cal.App.4th 1021, 1035* held that the Defendant complied with its obligations by immediately investigating Plaintiff's complaint.

Under California Government *Code § 12940(k),* an employer may be found liable for failing "to take all reasonable steps necessary to prevent discrimination and harassment from occurring."

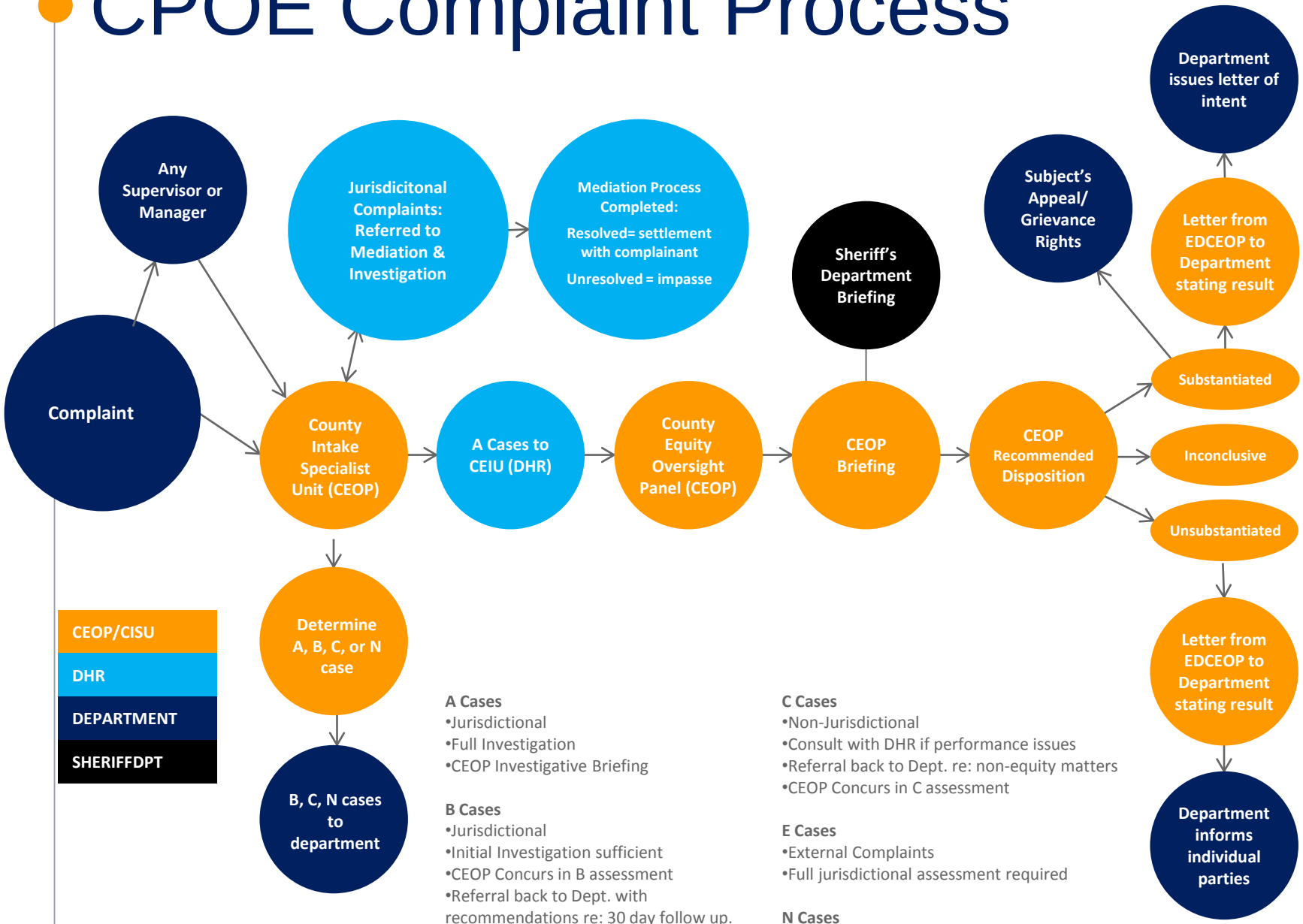
The CPOE Program is the reasonable step under the law

The CPOE process and its prohibition against Inappropriate Conduct Towards Others (ICTO), is the REASONABLE STEP necessary to prevent harassment and discrimination.

RISK MANAGEMENT

Think of the CPOE Process as an insurance policy for yourself and for your County.

CPOE Complaint Process



A Cases
- Jurisdictional
- Full Investigation
- CEOP Investigative Briefing

B Cases
- Jurisdictional
- Initial Investigation sufficient
- CEOP Concurs in B assessment
- Referral back to Dept. with recommendations re: 30 day follow up.

C Cases
- Non-Jurisdictional
- Consult with DHR if performance issues
- Referral back to Dept. re: non-equity matters
- CEOP Concurs in C assessment

E Cases
- External Complaints
- Full jurisdictional assessment required

N Cases
- Non-County entity/employee
- EDCEOP makes contact to involved entity for appropriate handoff

CPOE Benefits the County

Offering an Affirmative Defense (Federal Law)

The affirmative defense, originally set forth in the Supreme Court companion cases, commonly known as *"Farragher and Ellerth",* allows an employer to avoid liability to hostile work environment liability where:

a. "the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior"

b. "the plaintiff employee unreasonably failed to take advantage of any protective or corrective opportunities provided by the employer or to avoid harm otherwise." *Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998); Faragher v. Boca Raton, 524 U.S. 775 (1998).*

Mitigating Damages (California Law) Saves the County

The California Supreme Court held that under the Fair Employment and Housing Act (FEHA) employers are strictly liable for sexual harassment by supervisors, but plaintiffs cannot recover damages that could have been avoided with reasonable effort and without undue risk, expense or humiliation. The landmark decision declined to apply the affirmative defense set forth by the US Supreme Court in *Burlington Industries v. Ellerth (1998) 524 U.S. 742, 765 and Faragher v. City of Boca Raton (1998) 524 U.S. 775, 807* to sexual harassment actions under California law. Instead, the Court applied the avoidable consequences doctrine to reduce the damages if a plaintiff unreasonably fails to utilize existing anti-harassment procedures.

CPOE Protects the County and it Protects You

- By offering employees a forum in which they can air their complaints and obtain resolution without filing a lawsuit.
- By investigating and intervening early to determine the facts.
- Correcting inappropriate workplace behavior before it escalates into something worse, thereby preventing a lawsuit.
- Having the evidence needed to defend a lawsuit and reducing/mitigating damages/saving $$.

Positive Impact of the CPOE on Litigation

Number of employment lawsuits filed in Fiscal Year:

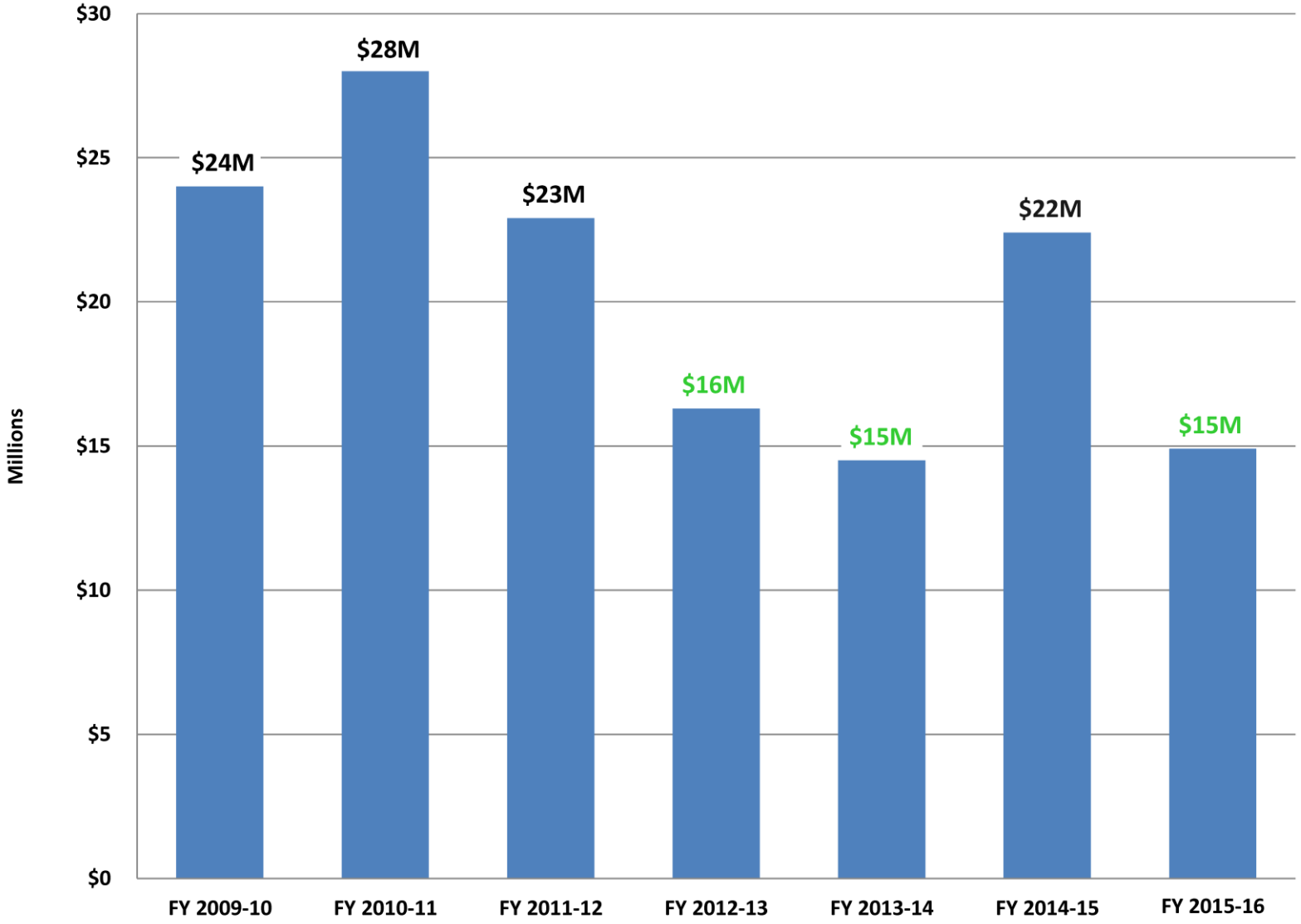
2011-2012: 114

Number of employment lawsuits filed in Fiscal Years:

2012-2013:	74	(-35%)
2013-2014:	77	(-32%)
2014-2015:	84	(-26%)
2015-2016:	76	(-33%)

LA County Employment Litigation Expenses

FY 2009-10 THROUGH FY 2015-16



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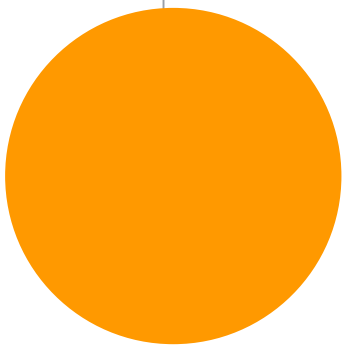
CPOE Program
Highlights and Features

- The Inappropriate Conduct Toward Others (ICTO) standard.
- An independent panel of employment lawyers reviews each case.
- Report back feature for systemic issues.
- Specialized training for areas of concern.
- Misuse and Abuse policy.
- Partner with the County's internal mediation unit.
- Participate in Risk Management Roundtables.
- Proactive intervention efforts with Departments.

Disadvantages and Solutions

- Possible increased complaint volume.
- Possible misuse and abuse of the process.



Questions