
July 28, 2020

Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, California 95758

Re: **Request to Investigate Discrimination by Employment Development
Department**

To Whom It May Concern,

Legal Aid Foundation of Los Angeles (LAFLA) submits this complaint to the Department of Fair Employment and Housing (Department) regarding the California Labor and Workforce Development Agency's (LWDA) Employment Development Department's failure to provide meaningful language access in its administration of various unemployment related benefits and services. LAFLA is a nonprofit law firm that protects and advances the rights of the most underserved – leveling the playing field and ensuring equal access to the justice system. Every year, LAFLA helps more than 100,000 people in civil legal matters by providing direct legal representation and other legal assistance for low-income people across the Greater Los Angeles region. Its unique combination of neighborhood offices, self-help centers at courthouses, and domestic violence clinics puts LAFLA on the frontlines in communities at the forefront of change. LAFLA has a long history of improving access to justice for immigrant communities, particularly those who do not use English as their dominant language, and conducting pioneering advocacy to ensure language access to the courts, public benefits, and other government agencies and systems.

In light of the ongoing changes pursuant to the COVID-19 pandemic, providing meaningful language services in accordance with the federal and state legal mandates is more important than ever and could have critical effects on people's lives. We file this complaint as an extension of our commitment to justice, which includes meaningful language access to vital services and benefits, particularly during times of crisis.

Current Issues Accessing EDD Services and Benefits

The Employment Development Department (EDD) is a state agency that administers various benefits and services related to job development and unemployment, including Unemployment Insurance Benefits (UIB) and Pandemic Unemployment Assistance (PUA). PUA is a new program that began on April 28, 2020, in response to the current crisis, for those ineligible for UIB, such as independent contractors. These programs are available for application through online portals on EDD's website, offered only in English and Spanish. Telephonic applications are also an option, but all phone lines are overburdened, and if an individual is able to get through to a live EDD staff person, no language services are provided for languages other than Spanish, unless the EDD staff person speaks the caller's language. Those

Other Office Locations:

East Los Angeles Office, 5228 Whittier Blvd., Los Angeles, CA 90022; 213-640-3883
Long Beach Office, 601 Pacific Ave., Long Beach, CA 90802; 562-435-3501
Santa Monica Office, 1640 5th St., Suite 124, Santa Monica, CA 90401; 310-899-6200
South Los Angeles Office, 7000 S. Broadway, Los Angeles, CA 90003; 213-640-3950

whose dominant language is other than English or Spanish are usually only offered a “callback” at a later time, per EDD's policy. Most individuals never receive a callback, and if they do, it is after an extremely lengthy delay. EDD actively encourages individuals, on its website and through the media, to utilize its online services, acknowledging the overwhelming demand and incapacity on the phone lines.¹ As a result, there is effectively no meaningful language access to EDD’s services other than in English and Spanish.

In these unprecedented times, with millions of Californians seeking employment related relief, EDD has fallen painfully short in providing meaningful language access. Although EDD has a Language Access Plan,² some multilingual translations and videos on its website, and some dedicated multilingual phone lines, this has not been sufficient to meet the demands of California’s diverse communities. Stories of individuals who have faced serious consequences related to COVID-19 due to the lack of meaningful language access have permeated the media.³ We have received many calls from individuals who do not speak English or Spanish as their dominant language and who have been unable to navigate EDD processes to request or receive critical benefits. In California, there are almost 7 million individuals who are unable to communicate effectively in English. Although many of these individuals are Spanish speaking, a significant number of those who are limited English proficient, approximately 2.4 million or 36%, speak languages other than Spanish.⁴ Many of our community partners are overwhelmed with requests for assistance, as they attempt to help these individuals with their applications, certifications, and other follow-up. EDD telephone numbers, including the dedicated lines in Mandarin, Cantonese and Vietnamese, are overburdened and have been impossible to get through, and many individuals have had no choice but to attempt to access the online portal in English or Spanish.⁵

LAFLA’s Client Ms. A & the Need for Language Access

One of LAFLA’s clients, Ms. A, illustrates the linguistic barriers faced by individuals who do not read English or Spanish well. Ms. A is a single mother and domestic violence

¹ Unemployment in CA: EDD Spokesperson Talks Future of Extra \$600 Pandemic Payment, Wait Times, KABC-TV Eyewitness News, July 11, 2020 (<https://abc7.com/california-unemployment-edd-benefits-program-extension-600-extended/6311736/>).

² 2018-2021 Language Access Plan, Employment Development Department, State of California (https://www.edd.ca.gov/pdf_pub_ctr/de7408.pdf).

³ Hospitals Have Left Many COVID-19 Patients Who Don’t Speak English Alone, Confused and Without Proper Care, ProPublica, March 31, 2020 (<https://www.propublica.org/article/hospitals-have-left-many-covid19-patients-who-dont-speak-english-alone-confused-and-without-proper-care>); Equitable Access To Health Information For Non-English Speakers Amidst The Novel Coronavirus Pandemic, Health Affairs, April 2, 2020 (<https://www.healthaffairs.org/doi/10.1377/hblog20200331.77927/full/>); Non-English speakers struggle to file coronavirus unemployment claims, CalMatters, April 2, 2020 (<https://calmatters.org/california-divide/2020/04/non-english-speakers-struggle-unemployment-applications/>).

⁴ U.S. Census Bureau, 2014-2018 American Community Survey 5-Year Estimates, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, Table B16001, California (<https://data.census.gov/cedsci/table?g=0400000US06&hidePreview=true&tid=ACSDT5Y2018.B16001>).

⁵ ‘It takes 150 redials’: Horror Stories from Californians Filing Unemployment Claims, Getting No Results, LA Times, July 11, 2020 (<https://www.latimes.com/california/story/2020-07-11/california-covid-19-coronavirus-unemployment-calls-issues>); California’s Unemployment Agency Targeted for Audit as Criticism Grows, LA Times, June 26, 2020 (<https://www.latimes.com/california/story/2020-06-26/california-unemployment-agency-audit-criticism-edd>).

survivor, who lost her independent contractor job in mid-February 2020 due to COVID-19. For months, she desperately sought assistance and experienced great confusion regarding her eligibility, as she was unable to get an explanation of EDD's services in her native language, Mandarin Chinese. Ms. A tried to review the EDD website in mid-March, but she could not understand it. Her neighbor told her a few days later that there was a Chinese phone line, which she attempted to call, but could not get through. In late March, she saw an advertisement on a Chinese social media app called WeChat about free help for unemployment benefits. Due to her limited English and inability to apply on her own, she joined the chat group and met "Attorney Ge." He informed the group of more than 100 people that he could file on their behalf. Once approved, the applicants would be required to pay Mr. Ge an \$800 lump sum or \$975 in installments. Many provided him their personal information, including Ms. A. Mr. Ge applied on behalf of Ms. A on or about April 6, 2020, even though she was considered an independent contractor and was not actually eligible for UIB. Mr. Ge put in the wrong date of birth for Ms. A so he tried to go back in on or about April 8, 2020 to fix it. Mr. Ge withheld her account information from her so Ms. A would have to rely on him to do any follow-up to receive benefits. When the PUA benefits application was released, Ms. A's friend helped her apply on April 28, 2020. Mr. Ge also filed a separate application for PUA for Ms. A on or about May 8, 2020. Ms. A received some correspondence in English from EDD and tried her best to respond. After repeated requests to Mr. Ge, Ms. A finally obtained what she thought was her account information, and she stopped contacting him for assistance. Unfortunately, Mr. Ge provided the wrong email address and password so she could not access her account online.

Ms. A obtained some sporadic work starting the end of March 2020, but was unable to sustain any jobs due to a lack of childcare and limited English skills. Due to the confusion around her claims, Ms. A tried calling EDD's Chinese and English lines for over a week, making hundreds of attempts daily from 8am to 12pm, but she was unable to connect with anyone. She made more than a thousand phone call attempts. At the end of May 2020, a friend informed Ms. A of a local 626 area code number for EDD, and she tried it out of desperation. She was able to get through to an English speaking EDD staff person. They provided no language assistance, and she had no choice but to use her 8 year old daughter to interpret. Her understanding of the call was that EDD instructed her to wait another 1 - 2 weeks. After not hearing back, Ms. A heard of another private service, and she paid \$300 to file another claim in June 2020. This service also helped her send in some certifications but she did not understand what she was submitting. After not hearing anything, Ms. A went to the address of a physical EDD office in West Covina, and someone came out to tell her that she would get a callback at 8 am on June 24, 2020, by a Chinese-speaker. She did not receive any calls that day. Ms. A then sought help from LAFLA, and when a LAFLA attorney called the technical assistance line with Ms. A on June 24, 2020, they were informed that only Spanish was on the "list" and no other languages were available. Ms. A was told to either call the dedicated EDD Chinese line number or wait for a callback. The LAFLA attorney was able to ascertain that Ms. A's PUA claim had been processed but needed to be certified. LAFLA helped Ms. A understand how to certify everything properly and assisted her in submitting some corrections. Finally, on Friday, June 26, 2020, Ms. A was able to connect with a Chinese-speaking EDD staff person. Ms. A was able to explain everything, including the work she had done since the end of March. Between early April and late June 2020, Ms. A had filed seven or eight claims with inaccurate information due to miscommunication and incompetence of those assisting her. In total, it took Ms. A almost three months to finally communicate with EDD in Mandarin Chinese. She was fortunate,

however, as most of LAFLA's clients who are limited English proficient have never received a callback or been able to communicate with EDD in their dominant or preferred language. Ms. A continues to rely on LAFLA for legal assistance and language access, as all documents sent to her continue to be in English and phone communication remains almost impossible.

LAFLA has documented countless examples of others who have faced similar difficulties and experienced the frustrations of Ms. A. LAFLA staff have attempted to contact EDD on numerous occasions for other clients, each time being informed that no language services were available. The result is that hundreds of thousands of individuals who use non-dominant languages are being shut out of this process completely. Those who manage to get through are likely submitting incomplete or inaccurate claims, which could have dire consequences during these challenging times.

It is more important than ever to provide meaningful language access during this pandemic as individuals who primarily use non-dominant languages have historically faced challenges in seeking access to basic amenities, legal remedies and supportive services. Reports have found that limited English proficiency has impacted the “ability to access fundamental necessities such as employment, police protection, and health care.”⁶ Unsurprisingly, access to justice has proven difficult for individuals who speak a language other than English at home, who have higher rates of poverty than the general population in California.⁷ These linguistically marginalized communities are often the most isolated and vulnerable, making services and benefits very difficult to access and obtain. Many already have great difficulty accessing technology-driven services and benefits.

To serve individuals with limited English proficiency (LEP) effectively, EDD must conduct proactive outreach, with robust language services and written translations, as an integral part of any changes and updates to policies and practices during this time. EDD should also work with local stakeholders to ensure that information is being disseminated. Legal services and community groups cannot be expected to be the main vehicle for reaching out and communicating changes regarding critical benefits and protections for low-income and linguistically marginalized communities. If EDD lacks capacity, it should provide organizations that work with individuals who do not speak English as their dominant language ongoing stipends to conduct outreach and education on EDD services and assistance with applications. Such organizations have deep community relationships, trust, and cultural intelligence to effectively communicate with diverse communities. The health, safety, and fundamental rights of millions of Californians who do not use English as their dominant language are at stake and could be lost without such access to justice.⁸

⁶ Asian Pacific American Legal Center and Asian Pacific Islander American Health Forum, California Speaks: Language Diversity and English Proficiency by Legislative District (2009) (https://www.migrationpolicy.org/sites/default/files/language_portal/California%20Speaks%20-%20Language%20Diversity%20and%20English%20Proficiency%20by%20Legislative%20District_0.pdf).

⁷ U.S. Census Bureau, 2014-2018 American Community Survey 5-Year Estimates, Characteristics of People by Language Spoken at Home, Table S1603, California (<https://data.census.gov/cedsci/table?q=S1603&g=0400000US06&tid=ACSST1Y2018.S1603>).

⁸ U.S. Census Bureau, 2014-2018 American Community Survey 5-Year Estimates, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, Table B16001

Efforts to Communicate with EDD

On April 21, 2020, LAFLA emailed a letter to EDD Director Sharon Hilliard and LWDA Secretary Julie Su, expressing our concerns and requesting that steps be taken to provide meaningful language access to all Californians seeking benefits and services from EDD. After another follow-up email, we received an email response from Ms. Hilliard on May 15, 2020, indicating that she was reviewing our letter. Not hearing anything further, we reached out again on May 22, 2020, over a month after our initial letter was sent, requesting a more substantive response. Ms. Hilliard offered a phone meeting, which was scheduled for May 28, 2020. During this meeting, we conveyed our concerns, to which Ms. Hilliard and her team indicated that most of our requests were not feasible for EDD to undertake at this time. Ms. Hilliard asserted that their website infrastructure was too old and did not have capacity to accommodate translated application portals in additional languages, as it could only support English and Spanish. She also explained that their protocol for providing telephonic language services was to transfer callers to EDD bilingual staff who speak the caller's language and if an EDD staff person is unavailable, then the caller could only be offered a callback. Ms. Hilliard confirmed that EDD staff speak 60 different languages, and only if the caller speaks a language outside of the 60 languages, can an outside third-party interpreter be patched into the call in real-time. LAFLA reiterated that this policy was ineffective, as callbacks are not occurring, and asked EDD to allow all EDD call staff to conference in a third-party interpreter in real-time if a bilingual staff member was unavailable. EDD stated they understood but did not commit to any changes in policy or protocols. Ms. Hilliard indicated that EDD may be able to translate some additional materials and asked LAFLA for some suggestions. She also committed to incorporate language access protocols into EDD's trainings for staff and internal chat box, as well as create a process to monitor language data, requests, and usage in its quality assurance measures.

On June 1, 2020, LAFLA sent a follow-up email to EDD with a list of website pages that would be useful to be translated and requested that EDD translate them into the top 10 languages in California after Spanish. Each of these languages have a significant population, over 60,000, who are limited English proficient in the State.⁹ Further, we again requested that EDD's telephone protocols include utilizing an interpreter to be conferenced into the call in real-time. Although we stressed the importance of all our requests, we asked that these be done immediately. We also provided numerous language access resources and guidance documents per EDD's request. With no response, no changes, and no improvements to any of EDD's language services for two weeks, we reached out again to Ms. Hilliard and Ms. Matilda Aidam, EDD's Equal Employment Opportunity Officer, to request an answer. In response, another call with Ms. Aidam and LAFLA staff was scheduled for June 23, 2020. During that call, no progress on our requests were reported. Ms. Aidam stated that previously translated materials (pre-pandemic) were being reorganized for better access on the website and did not identify any new materials that would be translated. Further, Ms. Aidam indicated that language access related training protocols were being finalized but did not confirm that any changes would be made to their policy of offering callbacks to individuals requiring language services. She also

(<https://data.census.gov/cedsci/table?g=0400000US06&hidePreview=true&tid=ACSDT5Y2018.B16001&vintage=2018&tp=false>).

⁹ *Id.*

indicated that some quality assurance protocols would include monitoring language services, but that would not go into effect for a number of months. Ms. Aidam did offer to serve as a point of contact for language access concerns and requested a list of organizations with whom she can communicate to provide updates. LAFLA provided this list to Ms. Aidam on June 30, 2020. Copies of our correspondence are attached to this complaint. With no significant improvements and linguistically marginalized communities continuing to struggle in accessing EDD, LAFLA files this complaint with the Department and requests that an investigation be expeditiously conducted to provide critical benefits for all Californians.

Legal Mandates

California Government Code Section 11135(a) provides that “[n]o person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”¹⁰ Accompanying regulations at 2 CCR § 11161 and 11162 state that it is discriminatory not to take appropriate steps to provide “alternative communication services” for individuals based on their national origin or ethnic group identification, which includes linguistic characteristics. These alternative communication services can include “the provision of the services of a multilingual employee or an interpreter for the benefit of an ultimate beneficiary and the provision of written materials in a language other than English.”

As the Department is well aware, Section 11135 was designed to be even more expansive than its federal counterpart, Title VI of the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964 (Title VI) requires that equal access be provided to individuals with limited English proficiency.¹¹ Under Title VI and its implementing regulations, recipients of federal funds, which includes EDD, must provide “meaningful access” to their services for individuals with LEP.¹² EDD, like other state unemployment agencies, falls under the Workforce Innovation of Opportunity Act (WIOA) and is subject to regulations laid out at 29 C.F.R. Part 38.¹³ Under these legal mandates, meaningful access includes but is not limited to free interpreting services in hearings and administrative proceedings, language services at counters and other public areas, written translation of vital documents and other materials, posting of signs notifying users of the availability of interpreters, translation of key content on

¹⁰ See, e.g., California Government Code section 11135 and implementing regulations.

¹¹ See 42 U.S.C. § 2000d and its implementing regulations, 45 C.F.R. Part 80; Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (2002).

¹² See *id.* Other federal statutes with language rights obligations include, but are not limited to, the Omnibus Crime Control and Safe Streets Act of 1968, Section 504 of the 1973 Rehabilitation Act, and the Americans with Disabilities Act (ADA); see also Executive Order 13166—Improving Access to Services for Persons With Limited English Proficiency, 65 Fed. Reg. 50121 (2000) (<https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/eolep.pdf>).

¹³ See 29 C.F.R. § 38.9, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act, Discrimination prohibited based on national origin, including limited English proficiency (<https://www.govinfo.gov/content/pkg/CFR-2017-title29-vol1/xml/CFR-2017-title29-vol1-part38.xml>).

the website, training of staff, and monitoring of complaints.¹⁴ The WIOA regulations also require EDD to comply with a “Babel” notice requirement for covered entities, which must indicate in various languages “that language assistance is available, in all communications of vital information, such as hard copy letters or decisions or those communications posted on Web sites.”¹⁵ EDD neither provides such notice routinely in correspondence nor is it clearly posted on its website. Language access is not a matter of EDD’s largesse or discretion. Rather, federal and state laws compel EDD to provide meaningful language services. Providing language access is a necessary core function that it must treat as a “basic and essential operating expense, not as an ancillary cost.”¹⁶

By limiting EDD's services and applications to only English and Spanish, EDD discriminates against individuals based on national origin by inhibiting access to otherwise-eligible applicants who do not read one of the two offered languages. Additionally, by effectively restricting the applications to an online format, as phone lines are impenetrable and linguistically inaccessible, EDD discriminates against residents with disabilities that prevent or impair use of the internet. Although there is a telephonic application process, the lines have been overburdened and are almost impossible to get through, with some individuals calling thousands of times in succession to get through to live EDD call staff, who offer no meaningful language services.

Need for Additional Translated Portals and Multilingual Telephone Access

In accordance with legal mandates and policies, EDD should translate online portals for all its benefits applications into the additional languages listed in the EDD Language Access Plan: Armenian, Chinese, Korean, Punjabi, Russian, Tagalog, and Vietnamese.¹⁷ Persian, Arabic, Japanese, and Thai are also high-need languages not included in the EDD Language Access Plan.¹⁸ Further, the number of phone lines must be increased to accommodate the current demand and must provide interpreting for any requested languages. Many who are unable to apply through other methods have historically utilized this telephonic platform, and they should continue to have such access. Additional dedicated phone lines (supplementing the existing lines

¹⁴ See, e.g., Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (2002); Complaint No. 171-12C-31, Investigation of the Superior Court of California, Los Angeles County and Judicial Council of California (Sept. 12, 2016) (<https://www.justice.gov/opa/file/894196/download>); Settlement Agreement between U.S. Department of Health and Human Services Office for Civil Rights, Southeast Region and Alabama Department of Human Resources, (Oct. 25, 2017) (<https://www.hhs.gov/sites/default/files/alabama-child-welfare-agreement.pdf>); 29 C.F.R. § 38.9, Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act, Discrimination prohibited based on national origin, including limited English proficiency (<https://www.govinfo.gov/content/pkg/CFR-2017-title29-vol1/xml/CFR-2017-title29-vol1-part38.xml>).

¹⁵ 29 C.F.R. § 38.9 (g)(3).

¹⁶ U.S. Department of Justice, Civil Rights Division, Letter to Chief Justices/State Court Administrators, August 16, 2010 (<https://www.justice.gov/file/1250731/download>).

¹⁷ 2018-2021 Language Access Plan, Employment Development Department, State of California (https://www.edd.ca.gov/pdf_pub_ctr/de7408.pdf).

¹⁸ U.S. Census Bureau, 2014-2018 American Community Survey 5-Year Estimates, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, Table B16001 (<https://data.census.gov/cedsci/table?g=0400000US06&hidePreview=true&tid=ACSDT5Y2018.B16001&vintage=2018&tp=false>).

in Spanish, Mandarin, Cantonese, and Vietnamese) for higher volume languages, such as Tagalog and Korean, should be established. The EDD Language Access Plan also indicates that EDD contracts with a vendor that provides telephonic interpreter services in more than 100 languages. All EDD staff must be trained to utilize this vendor and other vendors, as needed, in real-time for every caller requiring assistance.

Use of Qualified and Professional Interpreters and Translators

Despite the unprecedented nature of these times, qualified, trained and professional interpreters and translators must always still be used. EDD must not rely on family, friends and other informal interpreters for individuals to utilize in accessing critical benefits. This presents numerous concerns, ethical considerations, and issues for individuals who do not speak English as their dominant language. Many have resorted to relying on unqualified interpreters, like Ms. A, who was forced to use her eight year-old daughter, neighbors and even individuals whom she had to pay for language access to EDD. Failure to provide appropriate language services has also fueled unregulated local networks of untrained “interpreters” who prey on vulnerable immigrants in desperate need of assistance. For their own commercial gain, these untrained interpreters often charge high fees despite their lack of qualifications, some even demanding a portion of monetary benefits obtained as a condition of assistance. This is precisely what happened to Ms. A. Even those who are well-intentioned frequently cross the line into giving inappropriate advice and engaging in the unauthorized practice of law.

Non-trained interpreters do not have the appropriate vocabulary or literacy to understand fully and communicate accurately. The use of informal interpreters also carries the risk of bias in the interpreting process, inadvertently through choice of word or emphasis, or through intentional omission of facts. It may also diminish the non-dominant language speaker’s willingness to be candid. Those who are LEP may also self-censor the information they share to protect against exposing their friends or family members to difficult situations. *Language Barriers to Justice in California, A Report of the California Commission on Access to Justice*, states that “use of unqualified persons as interpreters . . . may result in genuine injustice where – through no fault of the court, the litigants, or the translator – critical information is distorted or not imparted at all Without a qualified interpreter, ‘the English speaking members of the court and the non-English speaking litigants or witnesses virtually do not attend the same trial.’”¹⁹ Without proper training, informal interpreters are likely to add, omit, summarize or substitute information, insert their own opinions, answer for their friend or family member, or get lost in the complex back and forth nature of interpretation. Incomplete or inaccurate information could result in disastrous consequences and outcomes, implicating legal and ethical issues for the client with EDD. A language miscommunication could lead EDD to believe a claimant is being untruthful or uncooperative, or worse, trying to commit fraud. This places these individuals at risk of being deprived critical benefits, relegating them into a second-class tier of individuals whose equal access to EDD’s programs and activities is effectively denied.

Therefore, EDD should implement clear and comprehensive protocols to provide free high-quality language services for all users of EDD’s programs and activities. The use of family

¹⁹ California Commission on Access to Justice, *Language Barriers to Justice in California, A Report of the California Commission on Access to Justice*, at 25 (September 2005) (citations omitted).

members, friends, and other unqualified interpreters should be prohibited except for limited circumstances, including but not limited to informing individuals of continuances, rescheduled appointments, and other ministerial or procedural updates, or emergency situations, such as threats to health or safety. The use of minors, under age 18, should be absolutely prohibited, absent emergency situations.

Use of Machine Translation

EDD's use of Google Translate as a mechanism to communicate on its website is extremely concerning. It must be made clear that, under no circumstance, should EDD use machine translation alone to facilitate communication, directly or artificially, with any consumer whose dominant language is not English. It is well-documented that even with the technological improvements to Google Translate and other machine translation programs, there are still serious inaccuracies in using machine translation solely without appropriate human review. A federal court recently rejected the use of Google Translate during a traffic stop, resulting in the granting of a motion to suppress in a criminal trial.²⁰ Any use of machine translation must be reviewed by a qualified individual to ensure accuracy. This standard for use of machine translation has been well established by many entities, such as the American Bar Association. The ABA Standards for Language Access in the Courts specifically lays out the dangers of machine translation without human review.²¹

Machine Translations Alone Create Mistrust, Confusion & Misrepresentation

Inaccurate translations create confusion and misrepresentation within linguistically marginalized communities regarding the services EDD offers and other information critical to community needs, even if it is for simple content. Assuming such information is generally relayed, linguistically marginalized communities may view EDD as lacking credibility and legitimacy because its messages are portrayed with grammatical mistakes and tones that could be perceived as informal, offensive or childish. The choice of terminology is also very important, and Google Translate cannot differentiate the many nuances in our vocabulary, especially in these critical times. It will affect EDD's ability to establish trust in these communities, many of which are historically underserved and very difficult to reach. EDD's use of machines to provide wholesale translations without considering the needs of different communities and how information should be presented misses the point of truly enhancing accessibility for consumers who do not use English as their dominant language. As stated below, this will have a discriminatory impact on linguistically marginalized communities not having access to and receiving the same assistance as English speakers.

Discriminatory Effect on Linguistically Marginalized Communities

Our greatest concern is the message the use of machine translation sends to and about linguistically marginalized communities. It creates a substandard level of what is acceptable for English speakers versus non-English speakers. This is discriminatory and offensive to many of

²⁰ *United States v. Cruz-Zamora*, 318 F. Supp. 3d 1264 (D. Kan. 2018).

²¹ American Bar Association Standards for Language Access in the Courts, February 2012, at 86 (http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf).

us who are serving and part of these very communities. They deserve the same respect, clarity, and lucidity that we provide to our English speakers regarding the critical services EDD offers. With the current trends in favoring the use of *plain language*, even materials in English go through multiple revisions and checks before being released to the public. To release information without any type of review is irresponsible and shows disrespect to linguistically marginalized communities. The inevitable result will be less access and fewer services provided to linguistically marginalized communities, which during these unprecedented times, could be the difference between life and death.

Data Collection and Monitoring

We also urge EDD to collect data on languages of users, which language services were requested, what services were provided, whether challenges were encountered, what complaints were filed, and how challenges and complaints were resolved. There should be enhanced processes put in place for extensive monitoring and reporting in order to improve systems for effective service delivery. Such data collection and oversight will not only ensure that staff are complying with the requirements to provide meaningful language access, but also that staff are receiving all the support they need to provide language services, particularly during times of crisis. Without proper oversight, vulnerable communities could be impacted in a disproportionate and disparate manner.

Conclusion

Currently, the only individuals able to access EDD's services are those who read English or Spanish and have the tools and skills to access EDD's online portal. All others are effectively shut out, and those who manage to get through on the phone are informed to wait for callbacks they rarely receive. This is hardly meaningful access in a state where, according to the U.S. Census, there are 40 language groups that number above 1,000 in population, and 11 languages that number over 60,000 individuals who are limited English proficient.²² There is no doubt that EDD offers critical benefits that could help millions of Californians during these unprecedented and difficult times. By only including those who use English and Spanish, EDD is denying meaningful access by refusing to provide alternative communication services throughout the EDD process.

We believe that EDD should take the following steps in order to comply with federal and state civil rights mandates:

- Make EDD services and benefits meaningfully accessible by translating ALL online application portals for all benefits programs into the additional languages listed in the EDD Language Access Plan: Armenian, Chinese, Korean, Punjabi, Russian, Tagalog, and Vietnamese. Persian, Arabic, Japanese, and Thai should also be added, as they are large language communities not included in the EDD Language Access Plan.²³
- Translate vital documents, including written correspondence regarding claims sent to

²² U.S. Census Bureau, 2014-2018 American Community Survey 5-Year Estimates, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, Table B16001, California (<https://data.census.gov/cedsci/table?g=0400000US06&hidePreview=true&tid=ACSDT5Y2018.B16001>).

²³ *Id.*

individuals, into Armenian, Chinese, Korean, Punjabi, Russian, Tagalog, Vietnamese, Persian, Arabic, Japanese, and Thai.

- Prohibit use of machine translation of written materials and communication without human review/editing as needed by a professional translator.
- Increase the number of phone lines, with additional dedicated lines in languages such as Korean and Tagalog, to provide access to all those who wish to apply through the telephonic platform. Telephonic access should be available and provided in all requested languages in real-time.
- Ensure that all EDD staff interacting with the public have access to telephonic interpreting services and be trained to use those services. If any telephone number provides audio recordings only, then that recorded information should be provided in multiple languages. EDD should not rely on friends, family or other informal interpreters to assist individuals in the application process.
- Ensure that information on the availability of language services is prominently displayed in-language and easy to find on the EDD website.
- Conduct outreach to linguistically marginalized communities on the availability of language services. In the event EDD lacks capacity, it should provide community organizations that work with linguistically marginalized communities ongoing stipends to conduct outreach and education on EDD services and provide assistance with applications.
- Collect and monitor data on languages of users, which language services were requested, what services were provided, whether challenges were encountered, whether complaints were filed, and how challenges and complaints were resolved.

We urge the Department to launch a thorough investigation of these urgent and consequential matters that will have a profound impact on our communities. We file this complaint with the hope of working collaboratively with EDD and the Department so that EDD can obtain and prioritize resources to provide comprehensive and meaningful language access for all Californians, in compliance with state and federal civil rights mandates. If you have any questions or seek any further information, please contact Joann Lee at (323) 801-7976 or jlee@lafla.org. Thank you.

Sincerely,

LEGAL AID FOUNDATION OF LOS ANGELES

By: 

Joann Lee, Special Counsel
Yolanda Arias, Managing Attorney
Matthew Clark, Staff Attorney
Brenton Inouye, Managing Attorney
Annie Yu, Staff Attorney

Enclosures



CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

INTAKE FORM

Discrimination by State-operated, funded, or financially-assisted entity

The completion and submission of this Intake Form will initiate an intake interview with a Department of Fair Employment and Housing (DFEH) representative. The Intake Form is not a filed complaint. The DFEH representative will determine if a complaint can be accepted for investigation. Your submission of this document acknowledges that you have read and agree to the DFEH's Privacy Policy.

COMPLAINANT:

NAME:

Legal Aid Foundation of Los Angeles (LAFLA)

TELEPHONE NUMBER:

(323) 801-7976

ADDRESS:

1550 W. 8th Street

EMAIL ADDRESS:

jlee@lafla.org

CITY/STATE/ZIP:

Los Angeles, CA 90017

Do you need an interpreter during the complaint process? No Yes

If yes, indicate language _____

STATE BODY, STATE ENTITY, STATE AGENCY OR RECIPIENT OF STATE FUNDING OR FINANCIAL ASSISTANCE THAT YOU WISH TO FILE AGAINST (e.g., name of State agency or recipient of state funding or financial assistance being complained about, name of program or activity where violation occurred:

NAME:

Employment Development Department (EDD)

TELEPHONE NUMBER:

1-800-300-5616 / 1-833-978-2511

ADDRESS:

P.O. Box 826880, MIC 83

CITY/STATE/ZIP:

Sacramento, CA 94280

NUMBER OF EMPLOYEES: unknown

1. I ALLEGE THAT I EXPERIENCED DISCRIMINATION OR DENIAL OF FULL AND EQUAL ACCESS

BECAUSE OF MY ACTUAL OR PERCEIVED:

- Age (40 or over)
- Ancestry
- Association with someone of a protected class
- Color
- Disability (physical or mental)
- Genetic Information or characteristic
- Marital Status
- Medical Condition (cancer or genetic characteristics)
- National Origin (includes language restrictions)
- Race
- Religious creed (includes dress and grooming practices)
- Sex/Gender
- Sexual harassment – hostile environment
- Sexual harassment – quid pro quo
- Sexual Orientation
- Other - (specify) _____

AS A RESULT, I WAS DENIED FULL OR EQUAL ACCESS TO THE BENEFITS OF, OR SUBJECT TO DISCRIMINATION UNDER, A PROGRAM OR ACTIVITY THAT WAS CONDUCTED, OPERATED, OR ADMINISTERED BY THE STATE OR A STATE AGENCY, OR A RECIPIENT FUNDED OR RECEIVING FINANCIAL ASSISTANCE FROM THE STATE OR A STATE AGENCY.

Last Date of Harm (Month/Day/Year): 06/24/2020 & Ongoing

2. Do you have an attorney who agreed to represent you in this matter? Yes No

If yes, please provide the attorney's contact information.

Attorney Name: Joann Lee; Matthew Clark; Yolanda Arias; Brenton Inouye; Annie Yu

Attorney Firm Name: Legal Aid Foundation of Los Angeles (LAFLA)

Attorney Address: 1550 W. 8th Street

City: Los Angeles State: CA ZIP: 90017

3. Briefly describe the type of program or activity and the denial of benefits or full and equal access you experienced:

The California Employment Development Department (EDD) is a state agency that administers various benefits and services related to job development and unemployment, including Unemployment Insurance Benefits (UIB) and Pandemic Unemployment Assistance (PUA). PUA is a new program that began on April 28, 2020, in response to the current crisis, for those ineligible for UIB, such as independent contractors. These programs are available for application through online portals offered only in English and Spanish. Telephonic applications are also an option, but all phone lines are overburdened, and if an individual is able to get through to a live EDD staff person, no language services are provided for languages other than Spanish, unless the EDD staff person speaks the caller's language. Those whose dominant language is other than English or Spanish are usually only offered a callback at a later time, per EDD's policy. Most individuals never receive a callback, and if they do, it is after an extremely lengthy delay.

By limiting EDD's services and applications to only English and Spanish, EDD discriminates against individuals based on national origin by inhibiting access to otherwise-eligible applicants who do not read one of the two offered languages. Additionally, by effectively restricting the applications to an online format, as phone lines are impenetrable and linguistically inaccessible, EDD discriminates against residents with disabilities that prevent or impair use of the internet. Although there is a telephonic application process, the lines have been overburdened and are almost impossible to get through, with some individuals calling thousands of times in repetition to get through to live EDD call staff, who offer no meaningful language services.

One of LAFLA's clients, a Chinese-speaking single mother and domestic violence survivor, spent months desperately seeking assistance, as she was unable to understand or apply for EDD's services. An independent contractor who lost her job due to Covid-19 in February 2020, she experienced great confusion regarding her eligibility. Between early April and late June 2020, she filed seven or eight claims with inaccurate information due to miscommunication and incompetence of those assisting her. She even paid someone to assist her due to her limited English proficiency (LEP) and was forced to use her eight year-old daughter to interpret during a call with EDD. She eventually sought help from LAFLA. When a LAFLA attorney called EDD with her, they were informed that only Spanish was on the "list" and no other languages were available. In total, it took almost three months for her to finally communicate with an EDD staff person in Chinese. She was fortunate, however, as most of LAFLA's clients who are LEP have never received a callback or been able to communicate with EDD in their dominant or preferred language. She continues to rely on LAFLA for ongoing language access to EDD.

The Legal Aid Foundation of Los Angeles (LAFLA) is a nonprofit organization whose mission is to provide equal justice for low-income people in Los Angeles. Pursuant to its mission, LAFLA provides free assistance to low-income residents seeking government benefits and other legal services. Through its discriminatory practices, EDD is diverting the resources and frustrating the mission of LAFLA and similar entities. LAFLA makes this complaint on its own behalf as well as on behalf of all others who have been, are, or will in the future be similarly impacted by EDD's discriminatory practices.

*** Please see attached letter for more background and details. ***

DEMOGRAPHIC INFORMATION

THIS INFORMATION IS OPTIONAL AND IS ONLY USED FOR STATISTICAL PURPOSES.

Primary Language: _____

Age: _____

GENDER / GENDER IDENTITY:

Male Female Non-Binary Other

MARITAL STATUS:

Single Married Cohabitation Divorced

RACE:

American Indian, Native American or Alaskan Native Native Hawaiian or Other Pacific Islander
 Asian White
 Black or African American Other

ETHNICITY:

Hispanic or Latino Non-Hispanic or Latino

NATIONAL ORIGIN:

<input type="checkbox"/> Afghani	<input type="checkbox"/> German	<input type="checkbox"/> Japanese	<input type="checkbox"/> Other Middle Eastern
<input type="checkbox"/> American [U.S.A]	<input type="checkbox"/> Ghanaian	<input type="checkbox"/> Korean	<input type="checkbox"/> Pakistani
<input type="checkbox"/> Asian Indian	<input type="checkbox"/> Guamanian	<input type="checkbox"/> Laotian	<input type="checkbox"/> Puerto Rican
<input type="checkbox"/> Bangladeshi	<input type="checkbox"/> Haitian	<input type="checkbox"/> Lebanese	<input type="checkbox"/> Salvadoran
<input type="checkbox"/> Cambodian	<input type="checkbox"/> Hawaiian	<input type="checkbox"/> Malaysian	<input type="checkbox"/> Samoan
<input type="checkbox"/> Canadian	<input type="checkbox"/> Hmong	<input type="checkbox"/> Mexican	<input type="checkbox"/> Sri Lankan
<input type="checkbox"/> Chinese	<input type="checkbox"/> Indonesian	<input type="checkbox"/> Nigerian	<input type="checkbox"/> Syrian
<input type="checkbox"/> Cuban	<input type="checkbox"/> Iranian	<input type="checkbox"/> Other	<input type="checkbox"/> Taiwanese
<input type="checkbox"/> Dominican	<input type="checkbox"/> Iraqi	<input type="checkbox"/> Other African	<input type="checkbox"/> Thai
<input type="checkbox"/> Egyptian	<input type="checkbox"/> Irish	<input type="checkbox"/> Other Asian	<input type="checkbox"/> Tongan
<input type="checkbox"/> English	<input type="checkbox"/> Israeli	<input type="checkbox"/> Other Caribbean	<input type="checkbox"/> Vietnamese
<input type="checkbox"/> Ethiopian	<input type="checkbox"/> Italian	<input type="checkbox"/> Other European	
<input type="checkbox"/> Fijian	<input type="checkbox"/> Jamaican	<input type="checkbox"/> Other Hispanic/Latino	
<input type="checkbox"/> Filipino			

DEMOGRAPHIC INFORMATION

THIS INFORMATION IS OPTIONAL AND IS ONLY USED FOR STATISTICAL PURPOSES.

DISABILITY:

- | | |
|---|--|
| <input type="checkbox"/> AIDS or HIV | <input type="checkbox"/> Limbs [Arms / Legs] |
| <input type="checkbox"/> Blood / Circulation | <input type="checkbox"/> Mental |
| <input type="checkbox"/> Brain / Nerves / Muscles | <input type="checkbox"/> Sight |
| <input type="checkbox"/> Digestive / Urinary / Reproduction | <input type="checkbox"/> Speech / Respiration |
| <input type="checkbox"/> Hearing | <input type="checkbox"/> Spinal / Back / Respiration |
| <input type="checkbox"/> Heart | <input type="checkbox"/> Other Disability |

RELIGION:

- | | |
|--|---|
| <input type="checkbox"/> Agnostic | <input type="checkbox"/> Nonreligious |
| <input type="checkbox"/> Atheist | <input type="checkbox"/> Protestantism |
| <input type="checkbox"/> Bahai | <input type="checkbox"/> Primal-indigenous |
| <input type="checkbox"/> Buddhism | <input type="checkbox"/> Quakers |
| <input type="checkbox"/> Catholicism | <input type="checkbox"/> Rastafarianism |
| <input type="checkbox"/> Christianity | <input type="checkbox"/> Spiritism |
| <input type="checkbox"/> Confucianism | <input type="checkbox"/> Shinto |
| <input type="checkbox"/> Hinduism | <input type="checkbox"/> Sikhism |
| <input type="checkbox"/> Islam | <input type="checkbox"/> Taoism |
| <input type="checkbox"/> Jehovah's Witness | <input type="checkbox"/> Unitarian-Universalism |
| <input type="checkbox"/> Judaism | <input type="checkbox"/> Zoroastrianism |
| <input type="checkbox"/> Neo-Paganism | <input type="checkbox"/> Other |

SEXUAL ORIENTATION:

- Straight or Heterosexual Gay or Lesbian Bisexual Other

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT & HOUSING PRIVACY POLICY

The California Department of Fair Employment & Housing (DFEH) has adopted this Privacy Policy, effective January 1, 2017. DFEH values the security and privacy of your personal information and is committed to protecting your privacy rights. The DFEH seeks only to collect relevant personal information that enables us to assist you in investigating and resolving complaints of discrimination as prescribed by California Government Code sections 11135 et seq., 12900 et seq., and California Civil Code sections 51, 51.7, 52.5, and 54 et seq.

All personal information we collect is governed by the State of California Information Practices Act of 1977 (Civ. Code, §§ 1798-1798.78), Government Code sections 11015.5 and 11019.9, and the California Public Records Act (Gov. Code § 6250 et seq.).

Outlined below is our online Privacy Policy and Notice:

- [Legal Authority for Collection and Use of Information](#)
- [Disclosure and Sharing](#)
- [What happens to information you submit to us?](#)
- [Cookies](#)
- [Links](#)
- [Public Disclosure](#)
- [Minors](#)
- [Security](#)
- [Access and Corrections to your Personal Information](#)
- [How to contact us if you have any questions regarding this policy](#)
- [Changes to our Privacy Policy](#)
- [Effective date](#)

Legal Authority for Collection and Use of Information

We collect information that may be directly associated with a specific person. We call this "Personal Information," and it includes, names, addresses, telephone numbers and email addresses. We collect this Personal Information through lawful means from individuals who seek to file a complaint with the DFEH, and we use this information to establish jurisdiction and to conduct an investigation of any allegations of Civil Rights violations. If you seek to file a complaint, you are required to provide us with sufficient information in accordance with California Government Code sections 11135 et seq., 12900 et seq., and California Civil Code sections 51, 51.7, 52.5, and 54 et seq.

Disclosure and Sharing

We do not sell your personal information. Government Code section 11015.5, subdivision (6), prohibits DFEH and all state agencies from distributing or selling any electronically collected personal information about users to any third party without the permission of the user. Any distribution of electronically collected personal information will be solely for the purposes for which it was provided to us, as described below.

We also may share your personal information under the following circumstances:

1. You give us permission.
2. We receive a request from a party with legal authority to obtain the information, such as a subpoena.
3. As authorized by law, it is transferred to / shared with the U.S. Equal Employment Opportunity Commission, the National Labor Relations Board, the U.S. Department of Labor, the U.S. Department of Housing and Urban Development, the U.S. Department of Health and Human Services, the U.S. Department of Education, the U.S. Department of Justice, or any branch of the California State Government, or any other local or Federal agency with similar jurisdiction.
4. Non personal information, including the allegations in the complaint document itself, may be disclosed to the public under the California Public Records Act.

What happens to information you submit to us?

The Personal Information we obtain from you will be used for the purposes for which it was provided: to further the DFEH's efforts to investigate and attempt to resolve the allegations of unlawful discrimination, harassment and/or retaliation that you filed. Electronically collected Personal Information we gather about visits to our website is used to help us improve the user experience and for basic web metrics of our website.

Links

Our website may contain links to other websites on the Internet that are owned and operated by third parties. DFEH does not control the privacy policies or practices of these websites. You are advised to review the privacy policies of the third party offering the website before providing any personal information to these websites. DFEH is not responsible for the content or practices of any linked third party website and such third party websites are provided solely for the convenience and information to our visitors.

Cookies

We do not collect information such as names, addresses, and emails from individuals browsing DFEH's website. However, when you visit our website, a "cookie" may be saved on your computer. A cookie is a tiny piece of data stored by your browser that helps us recognize your unique computer and your preferences when using our website. The information DFEH automatically collects may include the type of browser used, date and time you visited the site, and web pages you visited. This information is collected to improve the user experience and for basic web metrics. The information is deleted after 30 days. This type of electronic information collection is permitted by law and is exempt from requests made under the Public Records Act.

You can refuse the cookie or delete the cookie file from your computer after you visit our website. You can find instructions for managing cookie controls on websites for particular browsers. For example:

- [Microsoft Internet Explorer browsers](#)
- [Macintosh Safari browsers](#)
- [Mozilla Firefox browsers](#)

Public Disclosure

In the State of California, laws exist to ensure that government is open and that the public has a right to access appropriate records and information possessed by state government. At the same time, there are exceptions to the public's right to access public records.

These exceptions serve various needs including maintaining the privacy of individuals. Both state and federal laws provide exceptions. All information collected at this site becomes a public record that may be subject to inspection and copying by the public, unless an exemption in law exists. In the event of a conflict between this Privacy Notice and the Public Records Act, the Information Practices Act and/or other law governing the disclosure of records, the Public Records Act, the Information Practices Act and/or other applicable law will control.

Minors

We recognize the importance of protecting privacy where minors (a person under 18 years of age) are involved. We are committed to protecting the privacy of minors and do not knowingly collect personal information from minors or create profiles of minors through our website. Users are cautioned, however, that the collection of personal information submitted online or in an e-mail will be treated as though it was submitted by an adult. DFEH strongly encourages parents, guardians and adults to be involved in the internet activities of their children or other minors they are responsible for and to provide guidance whenever minors are asked to provide personal information online. If you believe a minor has provided us with personal information, we ask that a parent or guardian contact us at 1-800-884-1684.

Security

DFEH has put security measures in place to safeguard and protect your information from unauthorized access, disclosure, and loss. Our policy limits access to personal information to employees who have an established business need for the Personal Information including those directly involved in the filing, investigation, resolution and/or litigation of your complaint. Information that is physically located within the DFEH is protected by various security measures, which may include the use of encryption software to protect the security of an individuals' personal information during transmission and storage. Personal Information is destroyed according to the DFEH's records retention policy, and we only retain these records for as long as necessary to fulfill our business need. We train our employees on procedures and management of personal information we collect as well as on taking precautions and complying with limitations on the release of personal information.

Access and Corrections to your Personal Information

You have the right to review any Personal Information we collect about you. If you request all or a portion of the Personal Information collected about you by the DFEH, we will provide you with the Personal Information requested and explain how we use the information. You may request changes to your Personal Information you believe is incorrect by submitting a written request that credibly shows the error. If you believe that your Personal Information is being used for a purpose other than what you intended when you submitted it, you may contact us so we can rectify the misuse. In all cases, we will take reasonable steps to verify your identity before granting access or making corrections.

How to contact us if you have any questions regarding this policy

If you have any questions or concerns about the information presented in this Privacy Notice, you may contact:

DFEH Privacy Officer
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
1-800-884-1684

Changes to our Privacy Policy

We may update and revise our Privacy Policy. We will post any privacy policy changes on this page and, if the changes are significant, we will provide a more prominent notice.

Effective date

January 1, 2017