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FAIR EMPLOYMENT AND HOUSING COUNCIL
Meeting Notice and Agenda
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VII. Public Hearing: Proposed Employment Regulations
Regarding Definitions; Harassment and Discrimination
Prevention and Correction; and Training.

Attachment B: Notice of Proposed Rulemaking

Attachment C: Initial Statement of Reasons

Attachment D: Proposed Employment Regulations Regarding
Definitions; Harassment and Discrimination Prevention
and Correction; and Training

State Capitol

Room 127

Sacramento, CA 95814

Friday, August 17, 2018

ATKINSON-BAKER, INC.
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REPORTED BY: MICHELLE SAVAGE, CSR NO. 12957
FILE NO: AC085F1

<p>1 APPEARANCES: CHAIRMAN CHAIRMAN CHAYA MANDELBAUM 2 COUNCIL MEMBER DARA SCHUR COUNCIL MEMBER LISA CISNEROS 3 COUNCIL MEMBER JOSEPH ORTIZ COUNCIL MEMBER DALE BRODSKY 4 COUNCIL MEMBER TIM IGLESIAS DIRECTOR KEVIN KISH 5 REGULATORY LEGISLATIVE COUNSEL BRIAN SPERBER 6 SPEAKERS: LAURA CURTIS 7 CHLOE HALL BILLINGSLEY NOAH LEBOWICZ 8 DENNIS SEATON 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 2</p>	<p>1 respectively are also available. 2 The text of the proposed regulations is also 3 available on the Council's web page and we're 4 noticing -- or holding rather this hearing as part of 5 the formal rulemaking process after publicly noticing 6 the hearing more than 45 days ago in the California 7 Regulatory Notice Register published on June 29, 2018 8 and also via e-mail sent to more than 7,500 individuals 9 and stakeholders that receive the department's notices. 10 Pursuant to the notice, we are taking 11 testimony on the proposed amendments, and we will also 12 accept written comments to the proposed regulations 13 until 5:00 p.m. today, August 17th. You can e-mail your 14 written comments to fehcouncil@dfeh.ca.gov or if you 15 prefer you can mail them instead to the DFEH, care of 16 Brian Sperber at the DFEH's Los Angeles office located 17 at 320 West 4th Street, 10th Floor, Los Angeles, 18 California 90013. 19 If you brought a written copy of your comments 20 and you do not plan on separately submitting them, 21 please remember to give Mr. Sperber a copy before you 22 leave. If you don't have a hard copy available, 23 remember to get it in today by 5:00. 24 Anyone that testifies here today will receive 25 copies of any changes or amendments that Council makes</p> <p style="text-align: right;">Page 4</p>
<p>1 Sacramento, California Friday, August 17, 2018 2 10:13 a.m. - 10:51 a.m. 3 CHAIRMAN CHAYA MANDELBAUM: We're ready for 4 our public hearing. So we are on the record. And it is 5 around 10:15 on Friday, August 17th, and we are here at 6 the State Capital in Sacramento. My name is Chaya 7 Mandelbaum. I'm chair person of the Fair Employment and 8 Housing Council, and joining me are my colleagues on the 9 Council, Council Members Brodsky, Schur, Iglesias and 10 Ortiz, along with Ex-Officio Member and Director of the 11 Department, Kevin Kish. 12 So even though we've made informal 13 introductions, let me again welcome you to the hearing 14 portion of this meeting. The purpose is to receive 15 public comment regarding the issuance of the amendments 16 to the Fair Employment and Housing Council's employment 17 regulations, primarily relating to new legal provisions 18 regarding definitions, harassment and discrimination 19 prevention and correction and the training requirements. 20 The proposed regulations are slated to appear 21 in the California Code of Regulations, Title 2, Sections 22 1108, 11023, and 11024. Copies of the proposed 23 amendments to the FEHC regulations are available near 24 the door and also online. Also, the notice and initial 25 Statement of Reasons which are attachments B and C</p> <p style="text-align: right;">Page 3</p>	<p>1 and will have an opportunity within a 15-day period to 2 make written comment regarding any changes that are made 3 to the draft text. 4 The Council will consider each comment made as 5 well as all written comments received, and we will 6 respond to those comments in the final Statement of 7 Reasons which will become part of the Council's 8 rulemaking record. 9 This hearing is being transcribed by a 10 certified court reporter and a transcript will be 11 available after the meeting and will be part of the 12 official rulemaking record. Because it is being 13 transcribed, it is critical that anyone speaking do so 14 slowly and mindfully of the transcription, and that only 15 one person speaks at a time since it's very difficult to 16 transcribe competing voices talking over each other, and 17 it's also difficult to transcribe nonverbal 18 communication. 19 You will not be sworn in when you testify; 20 however, we do ask that you come to the front of the 21 room and speak into the microphone so that the court 22 reporter can take down your testimony. Please begin by 23 stating and spelling your name and stating your 24 affiliation. 25 Also, if you are commenting on a specific</p> <p style="text-align: right;">Page 5</p>

1 regulation, please identify the section and subsection
2 number of the regulations so that we can refer to it
3 while you speak. We will hear testimony until all those
4 wishing to testify today have had an opportunity to do
5 so.
6 So with that, any volunteers for first
7 comments? Anyone wishing to comment?
8 LAURA CURTIS: Hi, Good morning. This is
9 Laura Curtis. I'm with the California Chamber of
10 Commerce and this is my first time attending.
11 I just want to make sure that this is the
12 comments for definitions regarding "training." Our
13 concerns are with the definition of "employee." Well,
14 first let's start with the definition of "regular
15 basis."
16 Currently under -- and that is -- I can find
17 it for you. I don't know -- yeah, D 1 (a), stating that
18 regular basis means at least five employees regularly on
19 the payroll.
20 And then prior to that D 1, regularly
21 employing, employing five or more individuals for any
22 part of the day, on which the unlawful conduct allegedly
23 occurred.
24 So we see that as contradictory because you
25 have the unlawful conduct. You need five individuals

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1 employed on that day. But then additionally, later down
2 means at least five employees are regularly on the
3 payroll. So even within their own -- its own
4 definition, we see that as being contradictory.
5 And then also regular basis in general is
6 saying that they have to be employed regularly; where
7 currently under the regulations it's a 20-week period,
8 which is in line with the federal definition of regular
9 basis at 20-week period.
10 So without giving employers some sort of
11 specific guidelines for exactly what regular basis
12 means, we see this as opening up the potential
13 litigation around this issue; because you could have one
14 employee that is -- or one individual that is
15 technically employed or hired for New Year's Eve every
16 single year or you have someone that's been hired for --
17 that comes on for Black Friday every year.
18 Yes, it's routine, it's consistent, but that
19 shouldn't necessarily mean that it's a regular basis.
20 So you're going from potentially a 20-week period to the
21 most drastic situation being one day.
22 THE REPORTER: Sorry, sorry.
23 LAURA CURTIS: Slow down.
24 So our concern is that you're going from a set
25 number of weeks and set number of days for an employer

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1 to track these individuals to potential one day, which
2 we see as a drastic change, and that's our concern is
3 that it will just lead to lack of clarity for employers
4 in this situation.
5 Moving on to the section regarding definition
6 of employee, Section A 3, we are concerned that it's not
7 necessarily legally accurate. The definition of
8 employee includes interns, volunteers, and individuals
9 hired pursuant to a contract.
10 And a big concern for us -- or for employers
11 is the definition of intern, people pursuant -- hired
12 pursuant to a contract and volunteers. When these
13 individuals are properly categorized, they are not
14 technically employees. And in previous definitions in
15 the regulations themselves, it says that independent
16 contractors are not included as employees.
17 So we see this as being contradictory, and
18 again will lead to further confusion for the employer
19 community as to who exactly is included.
20 And regardless of whether or not you want to
21 include these individuals is not as much of a concern as
22 defining them as employees.
23 And so, again, the definition here that
24 interns, volunteers, and people pursuant to a contract
25 would be anywhere defined as an employee is concerning.

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1 And that's it for us. Thank you so much.
2 CHAIRMAN CHAYA MANDELBAUM: Thank you.
3 THE REPORTER: Can you state and spell your
4 name again, please?
5 LAURA CURTIS: Of course. Laura Curtis,
6 L-A-U-R-A; last name's Curtis, C-U-R-T-I-S. I'm with
7 the California Chamber of Commerce. Thank you.
8 CHAIRMAN CHAYA MANDELBAUM: Thank you, Ms.
9 Curtis, and welcome. We hope you will be a regular face
10 at our meetings going forward.
11 A couple comments about that for the
12 subcommittee in terms of analyzing the comments so far,
13 I think with respect to employees, I think substantively
14 everyone agrees that those types of classifications like
15 intern and apprentice -- or volunteer rather are covered
16 by the text. But I think it's a fair point to look at
17 other ways of including them, even though we didn't mean
18 to be addressing classifications specifically.
19 COUNCIL MEMBER DALE BRODSKY: Well, it does
20 say though at the introduction at the beginning for
21 purposes of this section.
22 CHAIRMAN CHAYA MANDELBAUM: Right.
23 COUNCIL MEMBER DALE BRODSKY: So it is not
24 creating a -- it's not saying necessarily that the
25 definition is always that, but for purposes of this

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1 section. I do appreciate the comment and we will take
2 it under advisement, but the wording that's used there
3 is exactly from the statute from 12940 J1.
4 CHAIRMAN CHAYA MANDELBAUM: Sure, sure,
5 substantively it's covered, but in terms of whether
6 there's a less confusing way to do it.
7 The other point about regularly employing on a
8 regular basis that I think might be worth considering is
9 I know we're trying to address some gamesmanship in
10 terms of 20 consecutive weeks, and I think the Chamber
11 would agree that an employer, and this is a real life
12 situation, who took the position that they have 20 free
13 weeks within which, even though they have more than five
14 employees, to have a free ride from antidiscrimination
15 protection I think is not the intent of the statute.
16 But there may be other ways of addressing that in terms
17 of some combination of the existing 20 calendar weeks or
18 a percentage of time in existence.
19 So another way to get it is just to consider,
20 and I haven't considered it fully either, would be to
21 say, you know, 50 or more percentage of the working
22 weeks that the employer has been in existence and/or 20,
23 whichever is more protective, something along those
24 lines.
25 COUNCIL MEMBER DALE BRODSKY: Well, I would

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1 suggest that you take a look at the initial Statement of
2 Reasons which really explains where this provision comes
3 from, where this proposal comes from. And it was very
4 well thought out.
5 Council member Sisnaros and I spent quite a
6 bit of time on this, but we will, of course, take it
7 under advisement.
8 CHAIRMAN CHAYA MANDELBAUM: Yeah, I trust that
9 you guys have spent more time on this than --
10 COUNCIL MEMBER DALE BRODSKY: And also, I do
11 want to point out that in the first sentence of D 1 it
12 says use the disjunctive "or" so -- which I think covers
13 it. It's not -- there is not an inconsistency because
14 there are two parts to it.
15 CHAIRMAN CHAYA MANDELBAUM: Great. Anyone
16 else wishing to provide public comment?
17 CHLOE HALL BILLINGSLEY: Good morning, Chair,
18 Council Members, Director. My name is Chloe Hall
19 Billingsley and I'm here speaking on behalf of
20 Employment Equality, as well as the other transgender
21 organizations that are directly involved in development
22 of SB-396 which obviously is what did prompt this
23 rulemaking action.
24 My comments, which were submitted or are
25 submitted do have proposed language that the Council did

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1 make mention of at the April 4th meeting to which I
2 spoke before and that's in reference to the
3 qualifications and expertise in 11024.
4 And our primary concerns -- I'm going to skip
5 over the procedural, which I'll leave that for the
6 comment, however, our primary concerns both in 11023 and
7 11024, the use of the term "sexual harassment training"
8 rather than as your amended regulations would suggest
9 replacing it with "harassment" based upon sex, gender,
10 identity. We're afraid that this does cause confusion
11 with reference to basically a rebranding of this. We
12 already obviously and contemporary audiences realize
13 that there is, in terms of training, there is a lack of
14 -- well, a lack of effectiveness to an extent, and I
15 think rebranding it or changing the name might be
16 something that Council would like to consider before
17 adoption.
18 In the 11024 or 24 (c), we propose -- again,
19 this is all submitted in our comments, but we propose
20 the inclusion of substantive language should reflect the
21 legislative intent around SB-396. Those of us that have
22 been so personally connected with it sought to introduce
23 the LGBTQ-plus specific topics and terminology into the
24 dialogue of groups that have not yet become familiar
25 with our struggles.

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1 The inclusion of guidance on what substantive
2 training content is necessary to help mitigate the
3 unlawful employment actions that have befallen my highly
4 marginalized community with nearly 47 percent of
5 transgender individuals reporting in adverse job outcome
6 and transgender women being twice as likely to be living
7 in extreme poverty with transwoman of color being 7
8 times as likely to be living on less than \$10,000 a
9 year, we believe that this is fully within the rights
10 and obligation of the FEHC to implement the standards
11 that would interpret SB-396.
12 Moving on to the qualifications, 11024, A 10.
13 Much of my community's more recent gains are
14 attributable to the numerous LGBTQ-plus, employees and
15 volunteers throughout the State and nation that have
16 provided cultural competency and harassment prevention
17 training around gender identity, gender expression and
18 sexual orientation.
19 Through SB-396 we believe the legislature
20 intended to address this setback and make -- mandate the
21 instruction of California hiring managers, many of which
22 are extremely unfamiliar to our challenges, yet the
23 law's impact and our ability to effectively engage these
24 employment gatekeepers relies on the FEHC's adoption of
25 the regulation that requires the addition of substantive

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1 training and practical examples of harassment based upon
2 gender identity, gender expression and sexual
3 orientation and the employment challenges we face be
4 provided by qualifying experts in harassment based upon
5 gender identity, expression and sexual orientation.
6 Those of us that have devoted us, we have --
7 or devoted our lives to this, we have received numerous
8 complaints from multiple reports of individuals who have
9 engaged in this training with not necessarily the level
10 of expertise that we believe SB-396 intended to be
11 disseminate.
12 Oftentimes, this is by practitioners that have
13 been doing this on a regular basis but not necessarily
14 been brought up to speed, and we believe that inclusion
15 of our voices in this is essential.
16 Those of us that -- I would never presume to
17 assert my expertise on a subject matter that I am not
18 familiar, let alone relay my experiences of a community
19 for which I'm not a member. And rather than permitting
20 those without said knowledge and expertise to take up
21 the role and responsibility of relaying erroneous
22 LGBTQ-plus harassment prevention information, we urge
23 the Council to adopt regulations that would mandate our
24 voice included in this.
25 So thank you very much and -- yes.

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1 COUNCIL MEMBER DALE BRODSKY: Are you
2 proposing an addition to the 1-2-3 types of trainers?
3 CHLOE HALL BILLINGSLEY: I am actually, a
4 subdivision of this section that would specifically
5 require the inclusion of the marginalized transgender
6 and non-binary individuals, you know, to disseminate
7 this.
8 I did propose, you know, in the proposed
9 regulations -- or the proposed tax that I submitted in
10 my comments, it does classify it. It spells out how it
11 could be limited to a group of individuals that from
12 special purpose benefit or nonprofit organization
13 representing those interests as the mechanism by which
14 authority can be gained, and we don't believe that it
15 would cause any additional economic or physical
16 responsibility on the part of employers or the State.
17 DIRECTOR KEVIN KISH: Just a technical
18 question. You submitted written comment before the last
19 hearing where this was introduced, correct?
20 CHLOE HALL BILLINGSLEY: No. I held off until
21 it was on the record, so it is submitted here.
22 DIRECTOR KEVIN KISH: It's submitted as of
23 today.
24 CHLOE HALL BILLINGSLEY: Yes, yes, yes, yes,
25 yes, yes, and we are also -- obviously we have assisted

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1 both the legislature, the executive office, and we would
2 gladly assist Council in flushing out any of that for
3 you.
4 DIRECTOR KEVIN KISH: So Brian circulated to
5 us last night all of the comments that had come in
6 during this 45-day period up until then, and I don't
7 think --
8 CHLOE HALL BILLINGSLEY: No. And Brian has
9 been informed. Yes, it will be submitted before the end
10 of today by 5:00 p.m.
11 (Unreportable Crosstalk.)
12
13 CHLOE HALL BILLINGSLEY: No.
14 COUNCIL MEMBER DALE BRODSKY: -- in the
15 language that you were -- who was going to be included
16 in your --
17 CHLOE HALL BILLINGSLEY: No. Actually it will
18 be submitted by the 5:00 p.m. deadline. I apologize for
19 the confusion, but you will receive it. Yes. Thank
20 you.
21 All right. Did you receive my name and
22 spelling accurately? Great. Thank you very much.
23 CHAIRMAN CHAYA MANDELBAUM: Thank you. Anyone
24 else wishing to provide comments as part of this
25 hearing?

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1 NOAH LEBOWICZ: Good morning. Noah Lebowicz
2 on behalf of the California Employment Lawyers
3 Association. Good morning. It's been a while. I
4 really don't have much to say other than specifically
5 addressing the counting subsections, that we will not be
6 submitting any formal written comment to these
7 regulations, but please do not take that as disinterest
8 or in any way a negative; in fact it's a positive. It
9 means that we are very satisfied with these proposed --
10 with this proposed language.
11 We think it addresses scenarios in a
12 thoughtful and coherent way that makes sense and that
13 provides a good deal of guidance. We all know those of
14 us legislating in this field that the issue of counting
15 is a hotly litigated and repeatedly litigated issue, so
16 any guidance, frankly, is helpful. And this guidance,
17 in particular, we think is quite accurate and clear.
18 So just a matter of public record to say that
19 we support this language and we'll, of course, wait for
20 any further modifications to see if there's further
21 comment necessary. Thank you.
22 CHAIRMAN CHAYA MANDELBAUM: Thank you.
23 Any other public comments for this rulemaking?
24 Anything come in via e-mail.
25 LEGISLATIVE COUNSEL BRIAN SPERBER: No.

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1 CHAIRMAN CHAYA MANDELBAUM: All righty.
2 DIRECTOR KEVIN KISH: I just want to add a
3 clarification about where we are in the life cycle. I
4 think that might be worth doing that more frequently at
5 our meetings because every regulatory package is at a
6 different stage.
7 So for this one the Council voted this text,
8 this proposed text into a formal rulemaking. This is
9 the hearing on the 45-day comment period, so get your
10 comments in by the end of the day. The subcommittee
11 will take those comments, analyze them and we will
12 return at a future meeting with either a proposed
13 modified draft or an unmodified draft with explanations
14 for the Council to then vote on another formal comment
15 period.
16 So thanks to everyone who's already submitted
17 comments today. The subcommittee will come back in the
18 future with responses.
19 COUNCIL MEMBER DALE BRODSKY: Yes. And on
20 behalf of Council Member Sisnaros I want to thank you
21 for the comments. They are always very helpful.
22 CHAIRMAN CHAYA MANDELBAUM: So thank you to
23 all.
24 COUNCIL MEMBER TIM IGLESIAS: Is it
25 appropriate for the Council members to comment or not, I

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1 forgot, in this stage of the process?
2 CHAIRMAN CHAYA MANDELBAUM: Yes, absolutely.
3 COUNCIL MEMBER TIM IGLESIAS: Okay. I just
4 had a couple of quick things. So I understand -- I
5 think I understand the intention of the phrase "normal
6 compliment," but I wonder if it would -- the public and
7 regulated community might benefit from some flushing out
8 of what "normal compliment" means.
9 I really like the example in DB and if there
10 is -- if it's possible to add more examples of
11 accounting given how complicated it is, some other maybe
12 common scenarios that are complicated that are resolved
13 under the regulations that might be helpful.
14 In Section D 2, third line, it seems like
15 there would have been an "and" between section --
16 there's a string of sections cited. And it might be
17 helpful to insert an "and" before the last one.
18 And the last thing is I am a little confused
19 about the issue of the definition of employee in the
20 Section 11024. And my confusion is probably based on my
21 lack of understanding of this area of the law. It seems
22 like that definition has to do with that section which
23 is specifically regarding required training and
24 education.
25 And as I read it, it seems like the required

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1 training and education is only for supervisory
2 employees; is that correct?
3 COUNCIL MEMBER DALE BRODSKY: This is
4 consistent -- this is implementing the statute that
5 requires training for harassment. And so that's the
6 section by which we have just -- and maybe it does need
7 to be clarified that, again, to say for purpose of this
8 section, and/or maybe there is another way to say it,
9 but that the -- are you referring specifically to
10 interns unpaid volunteers and persons under --
11 COUNCIL MEMBER TIM IGLESIAS: Well, yes. But
12 specifically what I'm asking that -- it sounds like --
13 (Unreportable Crosstalk.)
14
15 COUNCIL MEMBER DALE BRODSKY: This is the
16 training that has to be done for supervisors.
17 COUNCIL MEMBER TIM IGLESIAS: But for
18 supervisors. So the definition of employees, I'm trying
19 to figure out what the definition of employees is doing.
20 And in a sense, if they are employee -- so some of these
21 volunteers might be supervisors?
22 COUNCIL MEMBER JOSEPH ORTIZ: No, it's for
23 counting purposes, correct me if I'm wrong. So if you
24 look at Section 6 on the same page, it says having 50 or
25 more employees, that's when they have to do that

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1 training.
2 COUNCIL MEMBER TIM IGLESIAS: Okay.
3 COUNCIL MEMBER JOSEPH ORTIZ: So for counting
4 purposes, it's logically consistent but it strains the
5 plane reading. So I worry about non-attorneys taking a
6 look at this because if I hadn't done the jumps around
7 it, as you pointed out, you look at "employees" and say,
8 well, that's not consistent, and you also worry about,
9 well, interns shouldn't be considered employees, unpaid
10 volunteers shouldn't be employees. And, in fact, my
11 initial thoughts when I read this was, I know many,
12 especially non-profits, that are very small but may have
13 a one-time event where they have a huge number of unpaid
14 volunteers.
15 Well, that's really not going to trigger
16 because it's not going to trigger the 50 or more on a
17 recurring basis, but it's not obvious I think to the
18 average reader.
19 COUNCIL MEMBER DALE BRODSKY: And I think
20 that's a fair criticism that we can take a look at and
21 see if there's a better way to articulate. We're really
22 trying for shorthand, you know, just to make sure that
23 those groups which are included for harassment purposes,
24 for training harassment purposes but are not necessarily
25 included in the definition, in a broader definition of

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1 employee would be -- you know, it would be clear that
2 they are part of this. So we can --
3 COUNCIL MEMBER DARA L. SCHUR: This is Dara.
4 I would support that even if you just began this with
5 something that says for purposes of determining whether
6 there are 50 employees under X section.
7 COUNCIL MEMBER DALE BRODSKY: And also I think
8 the, you know, to come into play, it's not just for
9 counting, I think. It's also for looking at what
10 constitutes harassment substantively that you're doing
11 training about. So, you know, I mean, if you're going
12 to use the word "employee," that's another context in
13 which it comes up. But I think we will look at that and
14 see whether we can clarify to -- so that there's not a
15 confusion that we're not saying -- we're not saying that
16 that is more generally an intern, for example, it's more
17 generally considered an employee.
18 COUNCIL MEMBER TIM IGLESIAS: Thank you.
19 COUNCIL MEMBER DARA L. SCHUR: I also think
20 it's really helpful to take another look at who can be
21 trainers in terms of people that lived experience around
22 a variety of protected classes, whether it's non-profits
23 or people who have a record of involvement, but I think
24 it is very important for the experience. I've sat
25 through many a sexual harassment training that really

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1 was not helpful because people didn't understand some of
2 these issues.
3 So if there is a way to broaden this or
4 incorporate it or think about that, I would strongly
5 support that suggestion.
6 COUNCIL MEMBER DALE BRODSKY: Yeah, we didn't
7 change the substantive of this and maybe we need to look
8 at it again. This was not one that needed to be -- I
9 mean, it didn't jump out at you based on new
10 legislation. So we did not on our own modify it. Now,
11 with comments about it we can take a look and see if
12 there is a way to add to that.
13 I don't know that in a regulation we'll ever
14 be able to -- I don't think we ever will be able to
15 assure that every trainer is going to be, you know,
16 competent or express themselves or do adequate training.
17 So I think that we can only do what we can do, but I do
18 think it's worth looking at whether this list of
19 attorneys, human resources professionals and professors
20 or instructors is too limited.
21 CHAIRMAN CHAYA MANDELBAUM: Also, I'll use
22 this as an opportunity to plug the Sexual Harassment
23 Prevention Task Force that's ongoing because it is an
24 opportunity to look -- to study the efficacy of
25 harassment training on a more macro level and to look at

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1 potential structural changes.
2 So for those who are interested in this topic
3 outside of the regulations, please, you can find
4 information on the department's website. We would love
5 your input in that process.
6 COUNCIL MEMBER DALE BRODSKY: Well, if it
7 would be -- and is it possible for the task force to
8 also take a look at this and see if they can add to
9 this, you know, in a public comment?
10 CHAIRMAN CHAYA MANDELBAUM: That's an
11 interesting idea, yeah.
12 COUNCIL MEMBER DALE BRODSKY: That would be
13 really helpful.
14 COUNCIL MEMBER JOSEPH ORTIZ: And I'm
15 wondering, maybe there was a comment about the training
16 aspect LGBTQ-plus community and whether the --
17 THE REPORTER: I'm sorry, I can't hear you.
18 COUNCIL MEMBER JOSEPH ORTIZ: I'm sorry. I
19 was wondering if the task force might be able to take a
20 look at the training aspect for the LGBTQ community and
21 make sure, perhaps provide some guidance on that
22 training.
23 COUNCIL MEMBER DARA L. SCHUR: And let me just
24 say that not in the training context, but another
25 capacity there is precedent and statute for recognizing

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1 pure advocates and people with lived experiences of a
2 valued component of a program. Certainly that is
3 recognized in the mental health community where people
4 who have lived experience or our peers are often part of
5 it, so maybe there is an analogy there that we can draw
6 on as well just to include people who have lived
7 experience or familiarity with a particular culture or
8 communities that we're trying to address here.
9 COUNCIL MEMBER DALE BRODSKY: So if people --
10 as comments come in now with this next revision, if
11 anyone can address this part of it, it would be very
12 helpful.
13 CHAIRMAN CHAYA MANDELBAUM: And I think in
14 doing so, I would be mindful of the logistic reality.
15 We live in a big State with population centers that are
16 very, very different. So in contemplating workable
17 solutions I'd keep in mind all of those complexities,
18 including the fact that there is a lot of research that
19 in-person training may be more effective than remote
20 training.
21 So to the extent we're thinking, all right,
22 well, if the population doesn't have a member of this
23 community they can remote, we have to balance that
24 against the benefits of in-person.
25 So I would try to look holistically and

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1 encourage that when you make your proposals.
2 COUNCIL MEMBER DARA L. SCHUR: May I ask a
3 question of the last speaker just really quickly because
4 I didn't quite understand one of your comments.
5 Yes, please.
6 You said something about renaming it or
7 rebranding it. I wasn't quite sure what you are
8 proposing.
9 CHLOE HALL BILLINGSLEY: That was in reference
10 to -- we were actually suggesting that we keep the name
11 "sexual harassment prevention training" and the
12 references to "sexual harassment." The purpose of
13 SB-396 wasn't to rename the training itself. It was to
14 incorporate this concept of LGBTQ-plus harassment that
15 is extremely prevalent into the training itself. So
16 that was aside from the peer training aspect or the
17 consideration.
18 And in our proposed we do actually both attend
19 to both the logistical concerns as well as the peer
20 training considerations that were brought up in the
21 April 4th meeting as well as today. So we hope that you
22 will take a look at our language.
23 And we personally believe that there is a lot
24 of legislation coming about. However, none of it's
25 really touching on the substantive. And we believe that

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1 that's kind of the responsibility of the Council to
2 interpret those statutes because with additional
3 legislation that keeps adding or in the case of, I
4 believe it's SB-1343, Senator Mitchell's bill would
5 actually extend this to include employees, we believe
6 that this is the optimal time to really consider the
7 intent of both our marginalized community, and as
8 Council Member Schur said that the marginalized
9 communities that essentially the civil rights
10 legislative bills we're done to serve.
11 COUNCIL MEMBER DARA L. SCHUR: And does your
12 letter reference the pending legislation that's still
13 active, have bearing on this?
14 CHLOE HALL BILLINGSLEY: I have -- yeah, would
15 the Council prefer it referenced depending legislation?
16 COUNCIL MEMBER DARA L. SCHUR: I think it
17 might be helpful.
18 CHLOE HALL BILLINGSLEY: Then, yes, it does --
19 or it shall. I was teetering on that. So thank you for
20 that consideration and guidance. And we believe also as
21 well with the announcement and congratulations on the \$3
22 million outreach fund. We believe that that's
23 substantial and we'd definitely like to have a voice on
24 how that is spent. So, again, if there is any other
25 questions for me, otherwise, thank you again.

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1 CHAIRMAN CHAYA MANDELBAUM: Thank you.
2 DIRECTOR KEVIN KISH: I just want to weigh in
3 briefly and I've said this before, and you can hear it
4 again, which is that the Sexual Harassment Prevention
5 Training that's been mandated now for more than ten
6 years in California has very technical requirements in
7 the statute that the legislature has put in, including
8 requirements to train people about issues that don't
9 have anything to do with sexual harassment, necessarily.
10 Things like workplace bullying.
11 One of the things that the Sexual Harassment
12 Prevention Task Force has been looking at is the extent
13 to which the legislative requirements actually reflect
14 social science about the best type of training, and the
15 EEOC has done a lot of work on this with their Workplace
16 Harassment Prevention Task Force, including summarizing
17 the social science on this and including putting
18 together what they call the "Respectful Workplaces
19 Training," which is not specifically focused on sexual
20 harassment but takes into account the social science
21 about what kind of training works best and creates a
22 workplace training that is intended to prevent
23 harassment of all types.
24 So I think it would probably be worthwhile for
25 the legislature ultimately to look at some of that and

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1 perhaps actually remove some of the specifics that are
2 now required in the training that limit the ability of
3 employers to provide training that might actually be
4 more responsive to the particular needs of given
5 industry, a given workplace, a given employee
6 population.
7 One of the things that we do know is that
8 training that is not targeted towards the industry or
9 the specific workplace is less effective, and so there
10 are initiatives. There was a bill that requires a
11 working group that DFEH is a part of to think about
12 sexual harassment training for the janitorial industry.
13 There's legislation pending that would have us do the
14 same for the construction industry.
15 So there's a lot of movement around this, but
16 the overarching statutory scheme is one size fits all as
17 of right now in California.
18 CHAIRMAN CHAYA MANDELBAUM: Thank you. And
19 thank you for those who took time to provide public
20 comments today regarding the issuance of the DFEH. Do
21 you have some additional upon comments?
22 DENNIS SEATON: I have just one.
23 CHAIRMAN CHAYA MANDELBAUM: Okay. Can you
24 come say it there so people can follow long and it gets
25 into the rulemaking record.

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1 DENNIS SEATON: My name is Dennis Ceton. I'm
2 the Government Relations Director for the Church State
3 Council. Our executive director can't be here today but
4 he has given public comment before.
5 THE REPORTER: I can't hear you.
6 DENNIS SEATON: Oh, you can't hear me? Oh,
7 my. Can you please tell my wife that?
8 CHAIRMAN CHAYA MANDELBAUM: Just to clarify,
9 we will later be talking about the religious -- the
10 draft religious regs. Do you have comments related to
11 these other regs that we're discussing now or are your
12 comments targeted to the religious --
13 DENNIS SEATON: I have a specific -- I just
14 want to thank you, so it applies to now and later.
15 CHAIRMAN CHAYA MANDELBAUM: We'll take that.
16 DENNIS SEATON: We appreciate what each one of
17 you do each and every day helping what goes on here with
18 employees and employers in the State of California. And
19 the regulation that we were interested in that has to do
20 with how employees are screened out, so that may be
21 coming up. But we just wanted to say thank you and now
22 I've gotten it in early.
23 CHAIRMAN CHAYA MANDELBAUM: Perfect. Well, we
24 hope to hear more from you or the Church State Council
25 as our draft regulations we're going to discuss this

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1 afternoon on Religious Creed Discrimination comes up.
2 DENNIS SEATON: Thank you very much.
3 CHAIRMAN CHAYA MANDELBAUM: So thanks again to
4 those who participated in our formal rulemaking hearing.
5 We will accept written comments regarding these
6 regulations until 5:00 p.m. today so please remember to
7 get them in and to amend them as subtly encouraged by
8 council numbers.
9 With that we will relieve the court reporter
10 of her duties and thank you very much. And the formal
11 public hearing portion of our meeting is adjourned.
12 (The hearing was adjourned at 10:51 a.m.)
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1
2 REPORTER'S CERTIFICATE
3
4
5 I, Michelle Savage, CSR No. 12957, Certified
6 Shorthand Reporter, certify;
7 That the foregoing meeting was then taken
8 before me at the time and place therein set forth; that
9 the meeting was reported stenographically by me and
10 later transcribed into typewriting under my direction;
11 that the foregoing is a true record of the meeting taken
12 at that time.
13 I further certify that I am not a relative or
14 employee of any attorney of the parties, not financially
15 interested in the meeting.
16 I declare under penalty of perjury under the
17 laws of California that the foregoing is true and
18 correct.
19
20 Dated this 23rd day of August, 2018
21
22 
MICHELLE SAVAGE, C.S.R. NO. 12957
23
24
25

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