



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
FAIR EMPLOYMENT & HOUSING COUNCIL
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DIRECTOR KEVIN KISH

ATTACHMENT A

FAIR EMPLOYMENT AND HOUSING COUNCIL

Meeting of August 17, 2018

Minutes

State Capitol
Room 127
Sacramento, CA 95814

Councilmembers Present

Chaya Mandelbaum, Chairperson
Dale Brodsky, Councilmember
Tim Iglesias, Councilmember
Joseph Ortiz, Councilmember
Dara Schur, Councilmember
Kevin Kish, DFEH Director and Ex Officio member

DFEH Staff Present

Holly Thomas, DFEH Deputy Director of Executive Programs
Brian Sperber, DFEH Legislative and Regulatory Counsel
Paul Kennedy, DFEH Associate Business Management Analyst
Jim Baca, DFEH Policy, Training, and Resource Unit
Linda Verde, DFEH Executive Assistant
Sarah Smith, DFEH Business Services Manager

Others Present

Whitney Prout, California Apartment Association
Emma Regidor, California Department of Corrections and Rehabilitation
Curtis Washington, California Teachers Association
Chloe Hollett-Billingsley, Employment Equality
Arthur Wylene, Rural County Representatives of California
Renee Williams, National Housing Law Project
Benjamin Granholm, California Association of Realtors
Pamela Cohen, Disability Rights California
Ashley Werner, Leadership Counsel for Justice and Accountability
Alexander Harnden, Western Center on Law & Poverty
Noah Lebowitz, Law Office of Noah D. Lebowitz
Dennis Seaton, Church State Council
Kevin Baker, American Civil Liberties Union of Northern California
Laura Curtis, California Chamber of Commerce
Gail Blanchard-Saiger, California Hospital Association
Benjamin Ebbink, Fisher Phillips

I. Call to Order and Roll Call

Chair Mandelbaum welcomed guests to the FEH Council's 27th meeting and called it to order. He then turned the meeting over to DFEH Legislative and Regulatory Counsel, Brian Sperber, who conducted roll call.

II. Welcome and Introduction of Guests

Chair Mandelbaum announced that the Council meeting would be livestreamed on the Council's website and that the recording will be available later on the Council's website and YouTube channel. The public can participate in the meeting by emailing the Council and can find the Attachments to the Agenda on the website.

Chair Mandelbaum then acknowledged Department leaders and members, including: Holly Thomas, DFEH Deputy Director of Executive Programs; Brian Sperber, DFEH Legislative and Regulatory Counsel; Jim Baca, DFEH Policy, Training, and Resource Unit; Linda Verde, DFEH Executive Assistant; Paul Kennedy, DFEH Associate Business Management Analyst; and Sarah Smith, DFEH Business Services Manager.

Chair Mandelbaum then invited the guests in attendance to introduce themselves, on a voluntary basis.

III. Review of the Agenda

Chair Mandelbaum noted that hard copies of the agenda and its attachments were available for people in attendance and that copies are also available on the Council's webpage. He then reviewed the agenda for the meeting.

Chair Mandelbaum announced the highlights of the meeting, which included:

- Public Hearing: Proposed Employment Regulations Regarding Definitions; Harassment and Discrimination Prevention and Correction; and Training
- Consideration of Further Modifications to Text of Proposed Fair Housing Regulations
- Consideration of Further Modifications to Text of Proposed Employment Regulations Regarding Criminal History, the California Family Rights Act, and the New Parent Leave Act
- Public Workshop and Review of Working Draft of Regulations Regarding Religious Creed and Age Discrimination
- Public Workshop and Review of Working Draft of Government Code Section 11135 Regulations

IV. Approval of the Minutes

Attachment A: Minutes from June 21, 2018 Meeting of the Fair Employment and Housing Council

Chair Mandelbaum reviewed the minutes of the June 21, 2018 meeting. During that meeting, the Council considered and adopted Modifications to Text of Proposed Fair Housing Regulations; considered and adopted Modifications to Text of Proposed Employment Regulations Regarding Criminal History, the California Family Rights Act, and the New Parent Leave Act; discussed the Public Hearing on Civil Rights in California's Central Valley; and reviewed reports from other rulemaking subcommittees.

Director Kish requested the minutes be amended to state that the Legislative Women's Caucus, rather than the Department, requested outreach funding. Chair Mandelbaum asked for public comments on the minutes, and receiving none, the Council voted to approve the minutes unanimously with Director Kish's amendment.

V. Councilmembers' Reports

Chair Chaya Mandelbaum and Councilmembers

Chair Mandelbaum announced that Governor Brown appointed Connie Chan to the Council.

VI. Department of Fair Employment and Housing Report

Kevin Kish, Director, Department of Fair Employment and Housing

Director Kish thanked Paul Kennedy for his service at DFEH as he resigns and plans to begin service at the Department of Transportation.

Director Kish announced that DFEH issued its 2017 annual report, which is available at dfeh.ca.gov. He noted highlights of the report, including 24,779 complaints of discrimination filed and over 6,000 investigations conducted in 2017. He also noted that while disability was the most commonly cited basis for discrimination in housing, age was the most commonly cited basis for discrimination in employment.

Director Kish further noted improvements in processing timelines in 2017, noting that the length of time between the initial filing to the intake interview decreased by 30% and the time taken to close a case decreased by 22%.

Lastly, Director Kish announced that the Department is advertising to hire new attorneys, and as a result of the Department receiving three million dollars in outreach funding over a three-year period, the Department will also be advertising for a new outreach position to organize and implement an outreach plan.

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

Chair Mandelbaum introduced the proposed regulations and stated that the purpose of the hearing is to hear 45-day comments on the regulations.

Councilmember Iglesias suggested additional modifications, including: adding an “and” in section 11008(d)(2); and clarifying the definition of “employee” in section 11024.

The Council heard public comment from:

Laura Curtis, California Chamber of Commerce: Ms. Curtis expressed concern with the definition of “regular basis” in section 11008(d)(1)(A) and “employee” in section 11008(c)(1).

Chloe Hollett-Billingsley: Ms. Hollett-Billingsley expressed concern regarding the use of the phrase “harassment based on sex, gender identity, gender expression, and sexual orientation” rather than “sexual harassment training” in sections 11023 and 11024. She also suggested including substantive language regarding training content in section 11024(a)(2)(C). Ms. Hollett-Billingsley further requested that the regulations mandate that members of the transgender/non-binary community be included as trainers and/or as educators of trainers in section 11024(a)(10).

Noah Lebowitz: Mr. Lebowitz thanked the Council for the work on the regulations.

Dennis Seaton, Church State Council: Mr. Seaton thanked the Council for the work on the regulations.

Chair Mandelbaum thanked the public for providing comments and reminded people that the Council will accept comments until 5pm. With that, Chair Mandelbaum declared that the public hearing was adjourned.

VIII. Consideration of Further Modifications to Text of Proposed Fair Housing Regulations

Councilmembers Dara Schur and Tim Iglesias

Attachment E: Proposed Final Text of Proposed Fair Housing Regulations (Unmodified Text)

A. Discussion by Council

The subcommittee reported that they do not want to make any further modifications to the regulations since the last meeting and asked that the Council move forward in finalizing the regulations.

Councilmember Brodsky noted additional modifications, including: replacing terms “such as” with “including” in section 12178(f); and removing the duplicate term “that” in section 12266(c)(2).

B. Public Comment

The Council heard public comment from:

Whitney Prout, California Apartment Association: Ms. Prout thanked the Council for its work on the regulations. She requested that in section 12185(b) there be the ability to request verification when a disability is not apparent to the housing provider. Ms. Prout also expressed concern with the phrase “includes, but not limited to” in the definition of “service animals” in section 12005(e)(1).

Arthur Wylene, Rural County Representatives of California: Mr. Wylene requested the Council give consideration to their submitted comments on the draft regulations before it moves into the formal rulemaking process.

Renee Williams, National Housing Law Project: Ms. Williams thanked the Council for its work on the regulations and urged the Council to adopt and finalize the regulations.

Pamela Cohen, Disability Rights California: Ms. Cohen thanked the Council for its work on the regulations and urged the Council to adopt and finalize the regulations.

Ashley Werner, Leadership Counsel for Justice and Accountability: Ms. Werner thanked the Council for its work on the regulations and urged the Council to adopt and finalize the regulations.

Alexander Harnden, Western Center on Law & Poverty: Mr. Harnden thanked the Council for its work on the regulations and urged the Council to adopt and finalize the regulations.

C. Action by Council

The Council unanimously approved the text with technical amendments, authorized DFEH staff to submit it to the Office of Administrative Law, and authorized DFEH staff to make non-substantial changes if required by the Office of Administrative Law.

IX. Consideration of Further Modifications to Text of Proposed Employment Regulations Regarding Criminal History, the California Family Rights Act, and the New Parent Leave Act

Chair Chaya Mandelbaum and Councilmember Joseph Ortiz

Attachment F: Further Modified Text of Proposed Employment Regulations Regarding Criminal History, the California Family Rights Act, and the New Parent Leave Act

A. Discussion by Council

Chair Mandelbaum noted that the subcommittee made additional modifications to the regulations since the last Council meeting as a result of public comment.

Councilmember Iglesias suggested additional modifications, including: consistency and clarity with the use of terms “criminal history,” “conviction history,” “criminal history information,” and “record” in section 11071.1; and modification to the definition of “labor contractor” in section 11071.1(a)(3).

Councilmember Brodsky discussed additional modifications, including: reconsidering using the term “substantially” in section 11071.1(d); defining the acronym “NPLA” prior to its use in section 11087(d); rewording the phrase “between the two parents” to be read clearer in section 11088(c); adding the phrase “that the employee held” after “comparable position” in section 11089(a)(1); replacing the term “though” with “although” in section 11092(b)(1); rewording the second sentence in section 11093(f) to read “for an eligible covered employee who is employed by an employer that”; rewording the phrase “comes from” that appears twice in section 11093(f); rewording the phrase “forms of” in section 11093(f); and considering adding the phrase “during a twelve-month period” to the end of section 11093(f).

B. Public Comment

The Council heard public comment from:

Noah Lebowitz, California Employment Lawyers Association: Mr. Lebowitz suggested that subsections (A) and (C) of section 11017.1(a)(3) be written in a consistent manner.

C. Action by Council

The Council moved, seconded, and unanimously voted to approve a motion to adopt Attachment F as amended and initiate an additional 15-day comment period.

X. Report on Emergency Regulations Regarding Gender-Neutral Facility Signage

Councilmembers Dale Brodsky and Lisa Cisneros

Councilmember Brodsky reported that the subcommittee’s emergency regulations have expired and the Department of Industrial Relations is at work to eliminate any conflict in their occupational safety regulations regarding gender-neutral facility signage.

XI. Public Workshop and Review of Working Draft of Regulations Regarding Religious Creed and Age Discrimination

Councilmembers Lisa Cisneros and Joseph Ortiz

Attachment G: Working Draft of Regulations Regarding Religious Creed and Age Discrimination

A. Discussion by Council

The subcommittee reported that they made further modifications to the regulations since the last meeting, including: creating subsections (a)(i) and (a)(ii) in section 11016 regarding religious discrimination; and adding to 11076 subsection (a), 11078, and 11079 regarding age discrimination.

Councilmember Brodsky suggested the subcommittee revise the language in section 11016(b)(A) by replacing language regarding “pretext” with the phrase, “cannot ask for an applicant’s availability for work,” or words to that effect.

Councilmember Schur suggested additional modifications, including: revising the language in section 11016(b)(1) regarding limited permissible inquiries about health to instead read that there is a prohibition unless a lawful exception is present; cautioning the subcommittee to ensure reasonable accommodation is clearly defined in regards to religion and disability in employment; updating the language “individuals of one sex or the other” in section 11016(a)(1); resolving inconsistencies between subsections (b) and (c)(1) in section 11079; and removing “seriously and fairly” from section 11079(c).

Councilmember Iglesias suggested additional modifications, including: cross-referencing the liability standards regarding disparate treatment and disparate impact throughout the regulations; clarifying how to engage in the interactive process; providing clarity as to whether disparate treatment or disparate impact is being addressed in section 11076(a); providing clarity to the phrase “in such a way” in section 11079(a); providing clarity to the term “seriously” in section 11079(c); and providing clarity as to whether disparate treatment or disparate impact is being addressed in subsections (c)(1) and (c)(2) of section 11079.

Chair Mandelbaum suggested additional modifications, including: revising the definition of “private employer” to state “in subsection (i) below” in section 11075(h); removing the term “also” from the edited text in section 11076(a); and providing additional guidance to the last sentence in section 11076(a).

B. Public Comment

The Council heard public comment from:

Dennis Seaton, Church State Council: Mr. Seaton thanked the Council for its work on the regulations.

XII. Public Workshop and Review of Working Draft of Government Code Section 11135 Regulations Councilmembers Dale Brodsky and Dara Schur

Attachment H: Working Draft of Government Code Section 11135 Regulations

A. Discussion by Council

Councilmember Brodsky summarized the initial draft of the proposed regulations and sought input from the Council and the public regarding revisions and structural decisions.

Chair Mandelbaum and Councilmember Iglesias suggested a number of additional structural and line-edit modifications.

B. Public Comment

The Council heard public comment from:

Kevin Baker, American Civil Liberties Union of Northern California: Mr. Baker thanked the Council for its work on the regulations and proposed the subcommittee incorporate *Olmstead* case law to elaborate in the disparate impact sections.

XIII. Further Public Comment

None.

XIV. Adjournment

Chair Mandelbaum adjourned the meeting at approximately 3:45 PM.

Date: September 12, 2018

CHAYA MANDELBAUM

Chair

RENEE RONDINONE

DFEH Outreach and Education Specialist