FAIR EMPLOYMENT AND HOUSING COUNCIL
Meeting of December 10, 2013

Minutes
California State Capitol
1315 10th St., Room 127
Sacramento, CA 95814

Councilmembers Present

Chaya Mandelbaum, Chairperson
Dale Brodsky, Councilmember
Chanée Franklin Minor, Councilmember
Patricia Perez, Councilmember
Andrew Schneiderman, Councilmember
Phyllis Cheng, DFEH Director and Ex Officio Member

DFEH Staff Present

Nelson Chan, DFEH Associate Chief Counsel, Educational Outreach
Julie Montgomery, DFEH Senior Staff Counsel
Brian Sperber, DFEH Legislative and Regulatory Counsel
Mallory Sepler-King, DFEH Civil Rights Fellow
Kristin Kameen, DFEH Civil Rights Fellow
Roya Ladan, DFEH Staff Counsel
Josephine Blue, DFEH Executive Assistant

Others Present

Anna Caballero, Secretary, Business, Consumer Services and Housing Agency
Harold M. Brody, Partner, Proskauer Rose LLP, Member, Legal Committee, Employers Group
Noah Lebowitz, Partner, Duckworth Peters Lebowitz Olivier LLP, Board Member, CELA
Tony Diaz, Teacher, California Teachers Association
Elizabeth Dietzen Olsen, Counsel, Senate Office of Research
Kenneth Fleming, President, CAERP
Dean Lan, Civil Rights Coalition
Laurie Lively (for Jennifer Barrerra), Executive Assistant, California Chamber of Commerce
Alfonso Ramirez, Civil Rights Coalition
45 additional citizens attended through live web streams

I. Welcome, Opening Remarks, and Introduction of Council and Guests

Chair Mandelbaum called the meeting to order. Josephine Blue took roll. Chair Mandelbaum introduced audience members and notified those participating remotely of their opportunity to engage in public comment via e-mail.
II. Review of the Agenda

Chair Mandelbaum reviewed the agenda.

III. Approval of the Minutes

Chair Mandelbaum called for a vote to approve the minutes from the September 16, 2013 meeting. The Council unanimously passed a motion to approve the minutes.

IV. Councilmember Reports

Chair Mandelbaum reported that he and Councilmember Brodsky will co-present a panel presentation to be moderated by Director Cheng on April 26, 2014 at the State Bar Labor and Employment Law Section Annual Meeting/Public Sector Conference in Berkeley.

Councilmember Perez reported that she will co-present with a Department attorney an April 16, 2014 DFEH Webinar on sexual harassment prevention training.

Councilmember Schneiderman reported that he and Councilmember Franklin Minor will speak at the April 4, 2014 State Bar Fair Housing and Public Accommodations Subsection Annual Symposium at UC Irvine School of Law.

V. Department of Fair Employment and Housing Report

DFEH Director Cheng reported on the current activities of the Department. The Department’s educational partnerships won the State Bar’s 2013 Education Pipeline Award. With the new cloud-based case management system, the Department received a significant increase in the number of discrimination complaints filed in 2013.

VI. Guest Speakers

Chair Mandelbaum introduced guest speakers Noah D. Lebowitz and Harold Brody.

A. Noah D. Lebowitz, Partner, Duckworth Peters Lebowitz Olivier LLP, San Francisco, and Board Member of the California Employment Lawyers Association (CELA), spoke on behalf of CELA, and emphasized the importance of clarity in regulations so that they could be easily followed by employees and employers and help resolve disputes and increase compliance.

B. Harold Brody, Partner, Proskauer Rose LLP, Los Angeles, and Member of the Legal Committee, Employers Group, spoke on behalf of the Employers Group, and encouraged clarity, consistency and predictability in regulations for compliance by employers.

VII. Update on Changes Without Regulatory Effect

Brian Sperber gave an update on the changes without regulatory effect, approved by OAL on October 3, 2013.

VIII. Proposed Amendments Requested by the Council in Adopting the Draft Amendments to the California Family Rights Act Regulations

Chair Mandelbaum summarized the Council’s process on the CFRA regulations. He introduced the topic for further discussion after the lunch break.
IX. Presentation of Civil Rights Leadership Award to Governor Edmund G. Brown, Jr.; Acceptance and Address by Business, Consumer Services, and Housing Secretary Anna Caballero

Chair Mandelbaum presented the Civil Rights Leadership Award to Governor Brown for his transformative role in strengthening the Fair Employment and Housing Act, as well as his ongoing support for and advancement of civil rights enforcement.

Chair Mandelbaum introduced Business, Consumer Services, and Housing Secretary Anna Caballero, who accepted the award and made remarks on behalf of Governor Brown.

The Council recessed for lunch at 11:20 am.

LUNCH BREAK

The Council reconvened at 1:15 p.m.

X. Proposed Amendments Requested by the Council in Adopting the Draft Amendments to the California Family Rights Act (CFRA) Regulations

Director Cheng reported that Agency had given preliminary approval for the Council to proceed with developing a regulatory package on Proposed Amendments to the CFRA Regulations.

a. Discussion

The Council debated the merits of specifically incorporating the March 8, 2013 version of the FMLA Regulations into the CFRA Regulations versus the merits of incorporating a more generic reference to the “most recent version” of the FMLA Regulations.

b. Public Comment

Noah Lebowitz, on behalf of CELA, suggested that the Council develop new CFRA Regulations without incorporation by reference to the FMLA.

c. Action by Council

The Council unanimously voted to adopt the Revisions to the Text of Proposed Amendments to the CFRA Regulations from the September 16, 2013 Council meeting.

d. Update on Timeline for Rules

Chair Mandelbaum updated attendees on the rulemaking timeline. The adopted proposed amendments for the CFRA Regulations need to be approved by the Office of Administrative Law. The official notice, hearing dates and statement of reasons should be timely released before April 2014, the first of two hearing dates.

XI. Report from FEHA Employment Subcommittee

Councilmembers Brodsky and Perez gave an update on the ongoing drafting process for employment amendments to the FEHA Regulations. The Subcommittee projected that draft amendments would be ready by the Council’s February 6, 2014 meeting.
XII. Report from FEHA Housing Subcommittee

Councilmembers Schneiderman and Franklin Minor gave an update on projected new FEHA housing regulations under development.

XIII. Future Council Meeting Schedule and Future Council Projects

- February 6, 2014, meeting, San Francisco, Oakland, or Berkeley location to be determined.
- April 2014, meeting and hearing on Proposed Amendments to the CFRA Regulations, UC Irvine School of Law.
- June 2014, meeting and hearing on Proposed Amendments to the CFRA Regulations, San Francisco or Oakland, location to be determined.

In addition to the current regulatory projects being pursued by the subcommittees, Chair Mandelbaum discussed the future formation of subcommittees to address the other regulations within the Council’s purview, the formation of a Government Code section 11135 et seq. subcommittee, and the formation of a subcommittee focused on the other non-regulatory areas the Council has authority to address.

XIV. General Comment Period

Alfonso Ramirez and Dean Lan of the Civil Rights Coalition commented on public sector employment reporting issues.

XV. Adjournment

There being no further business to conduct, Chair Mandelbaum adjourned the meeting at 3:10 p.m.

Date: January 16, 2014

CHAYA MANDELBAUM  JOSEPHINE BLUE
Chair                          Legal Secretary