



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
FAIR EMPLOYMENT & HOUSING COUNCIL
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FAIR EMPLOYMENT AND HOUSING COUNCIL

Meeting of July 20, 2015

Minutes

Santa Clara University School of Law
500 El Camino Real
Bannan Hall, Room 139
Santa Clara, CA 95053

and

New College
Holywell Street
Oxford OX1 3BN
United Kingdom
(Teleconference Location)

Councilmembers Present

Chaya Mandelbaum, Chairperson
Dale Brodsky, Councilmember
Chanée Franklin Minor, Councilmember (telephonic appearance)
Tim Iglesias, Councilmember
Patricia Perez, Councilmember
Andrew Schneiderman, Councilmember
Dara Schur, Councilmember
Kevin Kish, DFEH Director and Ex Officio member

DFEH Staff Present

Nelson Chan, DFEH Chief of Public Policy and Education, Legislative and Regulatory Affairs
Brian Sperber, DFEH Legislative and Regulatory Counsel
Chiemaka Chukwu, DFEH Legal Intern
Connor Karen, DFEH Legal Intern
Hoosai Kabiri, DFEH Legal Intern
Sang Park, DFEH Legal Intern

Others Present

Ann Noel, Noel Workplace Consulting
Emma Regidor, California Department of Corrections and Rehabilitation

I. Call to Order and Roll Call

Chair Mandelbaum called the meeting to order at 10:36 a.m. and DFEH Legislative and Regulatory Counsel Brian Sperber conducted roll call.

II. Welcome and Introduction of Guests and New Councilmember

Chair Mandelbaum asked the guests in attendance to introduce themselves and reminded guests viewing remotely that they could participate in the meeting by emailing the Council. He then welcomed Councilmember Tim Iglesias to the Council.

III. Review of the Agenda

Chair Mandelbaum reviewed the Agenda and invited the guests to comment on subjects addressed by the Council throughout the day.

IV. Approval of the Minutes

Chair Mandelbaum reviewed the minutes of the May 4, 2015 Meeting, and the Council moved, seconded, and approved the minutes by a roll call vote. Councilmember Iglesias abstained.

Attachment A: Minutes from the May 4, 2015 Meeting of the Fair Employment and Housing Council

V. Councilmembers' Reports

Chair Mandelbaum discussed a cooperative law subcommittee of the State Bar of California's Labor and Employment Section Executive Committee, which aims to improve attorney civility, minimize unnecessary disputes in the litigation process, and increase the efficiency of resolving employment matters. He asked members of the Labor and Employment Section of the State Bar to respond to a survey designed to solicit feedback from practitioners.

Chair Mandelbaum discussed a recent letter sent by the ACLU to the DFEH to call attention to the under-inclusion of women directors from employment in episodic television and feature films and the statistical disparities in the hiring of directors.. Chair Mandelbaum discussed preliminary conversations he had with the Executive Director of the California Commission on the Status of Women and Girls regarding a potential hearing to examine this issue further and to explore best practices and solutions to address it.

VI. Department of Fair Employment and Housing Report

Director Kish discussed two Department initiatives: a leadership development program in conjunction with Sacramento State University and a training academy for investigators that will be launched in September.

VII. Discussion of Future Hearings and Research Initiatives

Chair Mandelbaum discussed the Council's authority to hold hearings, issue publications, conduct research aimed at eliminating unlawful discrimination, and to issue reports and recommendations to the Governor and Legislature. He encouraged the Council to begin pursuing initiatives of this nature and suggested that inquiries by the Council should be tailored in a fashion that allow it to generate empirical and actionable results.

Councilmember Franklin Minor commented that the increased public awareness of hate crimes and police

brutality should be examined by the Council. She further suggested that the Council could issue a “report card” to send to the Legislature. Councilmember Perez suggested that such efforts could be buttressed by researching the tangible effects of sexual harassment training and its effectiveness in deterring such conduct. Councilmember Schur suggested reviewing Americans with Disabilities Act provisions and California’s compliance with them.

Councilmember Iglesias suggested inquiring into what research has been conducted by the Legislature and other bodies on the state of anti-discrimination law in California. He also suggested researching the role of implicit bias and why there are relatively few cases investigating land-use discrimination. Lastly, he suggested monitoring recent HUD decisions about affirmatively furthering duties related to fair housing. Councilmember Schneiderman discussed how considerations of criminal records in employment and housing decisions may have disparate impacts on protected classes. Chair Mandelbaum discussed what empirical research or additional regulations might aid businesses in making informed decisions regarding the use of criminal records and might protect prospective employees whose criminal histories do not bear on their likelihood of success in the position. Councilmember Schur stated that housing entities face similar problems, and Councilmember Minor stated that clean-state projects have advocated that there should be no inquiries into criminal records for housing applications at all.

Guest Ann Noel brought to the Council’s attention a recent Frontline documentary titled “Rape on the Night Shift” which largely discusses sexual abuse of immigrant women in the janitorial industry. Director Kish replied that the Department has seen an increased number of related complaints and has recently filed a lawsuit relating to sexual harassment by janitors. Ann Noel also discussed existing regulations about criminal records requests, which Director Kish clarified were limited to restricting requests for arrests that did not result in conviction and similar events.

The Council took a brief recess to accommodate an obligation of Councilmember Iglesias at 11:16 a.m. and reconvened at 11:26 a.m.

The Council assigned various research topics to different members. Chair Mandelbaum and Councilmember Schneiderman will investigate issues regarding the use of past criminal convictions in employment and housing decisions. Councilmember Perez will investigate the effectiveness of mandatory sexual harassment training programs. Councilmembers Franklin Minor and Brodsky will liaise with human/civil rights groups. Councilmembers Iglesias and Schur will investigate the history and effect of land-use laws.

VIII. Discussion of Subcommittee Assignments

Chair Mandelbaum clarified the parameters of the Bagley-Keene Open Meeting Act, specifically with respect to subcommittees. Council subcommittees need to be capped at two members.

Councilmembers Iglesias and Schur formed a second housing regulations subcommittee that will address different portions of the housing regulations than the original housing regulations subcommittee. The second subcommittee will oversee regulations and investigations relating to land-use, prior conviction reports, credit history checks, and “discriminatory effect.” The creation of the new subcommittee was approved by a unanimous roll-call vote.

IX. Report from the CFRA Regulations Subcommittee

The new regulations went into effect on July 1, 2015.

X. Report from the Housing Regulations Subcommittee

The state of the housing regulations is unchanged since the last meeting. Councilmember Schneiderman believes that a subcommittee meeting can further the regulations' progress by the next Council Meeting.

The Council Adjourned for Lunch at 12:23 p.m. and reconvened at 1:41 p.m.

XI. Consideration of Further Modifications to Text of Proposed Fair Employment and Housing Act Employment Regulations

Attachment B: Further modified Text of Proposed Fair Employment and Housing Act Employment Regulations

A. Discussion by Council

Councilmembers Brodsky and Perez reviewed comments and proposed changes by the California Chamber of Commerce and the Transgender Law Center, as well as three changes further proposed by Councilmember Brodsky. Proposed changes to sections 11008 subdivision (d)(1), 11035 subdivision (l), 11042 subdivision (a)(3)(B), 11049 subdivisions (d)(1) and (d)(4), 11059 subdivision (d), 11062, and 11066 subdivisions (a) and (b) were accepted by the subcommittee. Proposed changes to sections 11023 subdivision (b), and 11034 subdivisions (a)(2)(B), (a)(2)(C), (a)(2)(e), (a)(9), (b)(2), (c)(1), (c)(2)(M), and (f) were rejected by the subcommittee. No request for change accompanied comments to sections 11008 subdivision (j), 11024 subdivisions (a)(9)(B) and (b)(5), 11029 subdivision (b), 11034 subdivision (l), and 11051 subdivision (b). Proposed changes to section 11035 subdivisions (f) and (g) which would amend the regulations to state that pregnancy leave is afforded to all employees disabled by pregnancy, including transgender men, sparked considerable debate as to whether the change would be permissible under the Council's mandate and the meaning of the underlying statute. The Council temporarily tabled the discussion until the Action by Council phase of the meeting.

B. Public Comment

Chair Mandelbaum invited public comment. No guests volunteered to speak.

C. Action by Council

The proposed changes, discussed in subsection A of this part, above, were approved after a unanimous roll call vote. After a brief renewed debate, the Council moved, seconded, and approved, by a vote of 6 to 1, an amendment which clarifies that pregnancy protections apply to transgender men that are disabled by pregnancy or who are perceived as being pregnant.

XII. Guest Speaker

The potential guest speakers were unavailable for the meeting.

XIII. Future Meetings

Chair Mandelbaum stated that future meetings will be announced soon on the Council's website.

XIV. Further Public Comment

There was no further public comment.

XV. Adjournment

Chair Mandelbaum adjourned the meeting at 3:34 p.m.

Date: August 10, 2015

CHAYA MANDELBAUM

Chair

HENRY YANDELL

DFEH Legal Intern