



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 June 21, 2018

Minutes

Elihu M. Harris State Building
115 Clay Street, Room 15
Oakland, CA 94612

Councilmembers Present

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

DFEH Staff Present

Janette Wipper, DFEH Chief Counsel
Brian Sperber, DFEH Legislative and Regulatory Counsel
Paul Kennedy, DFEH Associate Business Management Analyst

Others Present

Anna Buck, California Association of Realtors
Whitney Prout, California Apartment Association
Will Abernathy, Morgan, Lewis, & Bockius
Arthur Wylene, Rural County Representatives of California
Madeline Howard, Western Center on Law and Poverty
Corinne Green, Transgender Law Center
Melissa Morris, Public Interest Law Project
Sarah Ramsey, Western Center on Law and Poverty
Lauren DeMartini, Bay Area Legal Aid
Deborah Gettleman, Disability Rights California
Michelle Uzeta, Disability Rights California
Eva DeLair, Legal Services for Prisoners with Children
Beth Avery, National Employment Law Project
Deborah Thrope, National Housing Law Project
Renee Williams, National Housing Law Project
Guadalupe (Lupe) Estrada

I. Call to Order and Roll Call

Chair Mandelbaum called the meeting to order, and DFEH Legislative and Regulatory Counsel Brian Sperber

took roll call. All Council members were present.

II. Welcome and Introduction of Guests

Chair Mandelbaum thanked the guests for attending, reminded the attendees that the meeting was being livestreamed, and that materials for the meeting were in the room for guests attending in person and on-line for guests watching the livestream. He also stated that members of the public who were watching the livestream and wished to comment could do so by sending an email to fehcouncil@dfeh.ca.gov. Chair Mandelbaum introduced the DFEH staff members in attendance: Janette Wipper, DFEH Chief Counsel; Brian Sperber, DFEH Legislative and Regulatory Counsel; and Paul Kennedy, DFEH Associate Business Management Analyst. He then allowed any guest who wished to introduce themselves to do so.

III. Review of the Agenda

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

- Consideration of the proposed 15-day comment period version of the Fair Housing Regulations;
- Consideration of the proposed 15-day comment period version of Employment Regulations Regarding Criminal History, the California Family Rights Act, and the New Parent Leave Act;
- Discussion about the public hearing in the Central Valley; and
- Reports from other rulemaking subcommittees.

IV. Approval of the Minutes

Attachment A: Minutes from the April 4, 2018, Meeting of the Fair Employment and Housing Council

Chair Mandelbaum reviewed the minutes of the April 4, 2018, meeting. That meeting included a 45-day comment public hearing on proposed Fair Housing Regulations; a 45-day comment public hearing on proposed Employment Regulations Regarding Criminal History, the California Family Rights Act, and the New Parent Leave Act; and a review of pending and forthcoming rulemaking actions. The Council approved the minutes unanimously.

V. Councilmembers' Reports

Chair Chaya Mandelbaum and Councilmembers

Chair Mandelbaum reported that the Office of Administrative Law approved the national origin discrimination regulations, which will take effect on July 1, 2018.

VI. Department of Fair Employment and Housing Report

Kevin Kish, Director, Department of Fair Employment and Housing

Director Kish started by noting the new resources made available since last meeting. First, DFEH has created a webpage for the Council meeting in Fresno, which the public can access through the Council's website and contains testimony and pictures. Director Kish also encouraged the audience to take a look at the website, and stated that the Council would discuss the meeting later in the day.

Director Kish also stated that DFEH has created a new webpage about the use of criminal histories in employment decisions. This page is linked on the DFEH homepage, and includes information about how employers can comply with the law, including sample forms and letters. Additionally, DFEH has launched a

Spanish language version of CCRS, the online filing system. Director Kish then introduced the new Chief Counsel, Janette Wipper, who joined DFEH from the Department of Labor, where she was Regional Director at the Office of Federal Contract Compliance Programs and was previously a Managing Partner for the San Francisco office of Sanford Heisler Sharp.

VII. Consideration of Modifications to Text of Proposed Fair Housing Regulations Councilmembers Dara Schur and Tim Iglesias

Attachment B: Modified Text of Proposed Fair Housing Regulations

A. Discussion by Council

Councilmembers Schur and Iglesias introduced this item. The subcommittee made many revisions in response to public comment and outlined them all.

B. Public Comment

Director Kish stated that the DFEH had received a request for the Council to further explain the process for adopting the regulations and then outlined the Administrative Procedure Act and where these regulations are in that process.

Whitney Prout, California Apartment Association: Ms. Prout thanked the Council and subcommittee for their work, and expressed appreciation for the changes made to the previous draft. First, Ms. Prout commented on alternative accommodations for when an individual has a disability or disability-related need. Ms. Prout believes that subsections (a)(3)-(a)(6) are sufficiently clear that there is no requirement to provide alternative accommodations for someone who is not disabled or does not have a disability-related need.

Next, Ms. Prout commented on the language relating to denial of reasonable accommodations, and how this applies when an agreement for an alternative accommodation has been reached. Ms. Prout expressed her belief that the draft regulations are sufficient as to what is considered a denial and what is not. Specifically, the parties coming to an agreement regarding an alternative accommodation is not a denial, whereas parties failing to agree is a denial of an accommodation.

Finally, Ms. Prout expressed concern about the process of requesting verification of a disability or disability-related need when an animal is alleged to be a service animal. As discussed in section 12185 on page 33, housing providers can only verify a service animal through the two questions. Ms. Prout stated that she did not see any mandates in the Unruh Act to limit the inquiry in this way, and noted that tenants tend not to distinguish between specific categories of service animals, which can cause confusion and difficulty to a housing provider, especially when the disability or disability-related need is non-obvious or unknown.

Therefore, the California Apartment Association would like to see a process to request verification of a non-obvious or unknown disability or disability-related need.

Anna Buck, California Association of Realtors: Ms. Buck stated her agreement with the previous comments made by Ms. Prout, and said that the California Association of Realtors also had concerns regarding the proposed language in section 12185(b). Ms. Buck expressed her belief that based on the Unruh Act, residential apartment complexes do not fall under the ADA's definition of public accommodation, with the exception of public areas such as leasing offices and other public rooms. Ms. Buck also expressed concern regarding the addition of the phrase "young adults" into section 12266(e)(1) on page 39. Ms. Buck commented that this was

confusing due to the lack of a clear definition of who constituted a “young adult.”

Deborah Thrope, National Housing Law Project: Ms. Thrope expressed support for the Council’s work in drafting the regulations and considering the public comments. Ms. Thrope urged the Council to adopt the regulations in their current form, and agreed with the non-substantive revisions made during this meeting. Finally, Ms. Thrope stated that she recognized that the existing regulations are not comprehensive, and looked forward to continuing to work with the Council in the future to address the remaining provisions in the statutes.

Melissa Morris, Public Interest Law Project: Ms. Morris stated the Public Interest Law Project’s support for the Council adopting the regulations as quickly as possible, including the non-substantive changes discussed today. Ms. Morris also addressed the topic of alternative accommodations in response to the Council’s earlier discussion at this meeting. Ms. Morris stated that under existing law, it is not permissible for a landlord to deny a reasonable accommodation simply because the landlord has a subjective belief that another accommodation would be more reasonable. Ms. Morris added that the regulations as drafted are adequate to provide protection, as frequently individuals will request an accommodation and the housing provider will want to provide an alternative accommodation, even though the requested accommodation does not create an undue burden. Finally, Ms. Morris expressed her belief that the current language provides sound guidance on this issue and reflects current law.

Deborah Gettleman, Disability Rights California: Ms. Gettleman stated that the language is excellent as drafted, and urged the Council to adopt it in its current form. Ms. Gettleman thanked the Council for their work over the years, and stated that the regulations provide strong guidance for tenants and housing providers on many important issues, provide uniformity for both landlords and the courts, and give strong guidance to the public.

Eva DeLair, Legal Services for Prisoners with Children: Ms. DeLair expressed her appreciation for the Council’s work, and stated that she had three specific comments. First, Ms. DeLair stated that the definition section defines a “criminal conviction” as either a felony or a misdemeanor. However, the example in section 12266(b)(2), on page 37, includes a traffic conviction not related to alcohol even though such a conviction would typically be an infraction. For section 12269(a)(3), on page 41, Ms. DeLair asked that infractions also be excluded from the type of record that can be considered. Finally, Ms. DeLair expressed her appreciation that certificates of rehabilitation were included in that section, and requested that the Council also include gubernatorial and presidential pardons.

The Council paused the public comment to discuss Ms. DeLair’s proposals and agreed to amend the draft largely accordingly.

Ms. DeLair thanked the Council for adopting the proposed language, and also commended the Council for adding the “young adults” language into section 12266(e) on page 39, as criminal justice policy is expanding to include neuroscience research which recognizes that young adult brains are still undergoing development until age 25.

Arthur Wylene, Rural County Representatives of California: Mr. Wylene first stated that the Rural County Representatives of California was attending this meeting as part of a coalition of the members of regulated community for public land use practices, which is responsible for implementing the regulations, and who have significant concerns with the current draft language. In addition to the Rural County Representatives of California, this coalition includes the California State Association of Counties, Urban Counties of California, League of California Cities, and the American Planning Association. Mr. Wylene noted that he had previously submitted public comments expressing these concerns and will do so again during the upcoming 15-day public

comment period.

First, Mr. Wylene commented that during the several years during which the regulations have been developed, there has been no evidence of outreach to public officials. Director Kish clarified that no one has been invited to speak during the regulatory process, and at the Fresno hearing, which was not a regulatory meeting, Director Kish made a decision not to invite public officials, as public officials already have a platform; however, no regulatory processes occurred at or came out of that meeting. The Administrative Procedure Act enables anyone who is interested to participate in the process.

With regard to the scope of coverage for land use discrimination and the unavailability of housing opportunities, Mr. Wylene stated that the draft regulation seemed to overlook statutory language in Government Code section 12955(l), an unpublished court of appeal case, and a federal case that supports interpreting the word “unavailable” in the statute so as not to include merely diminishing housing opportunities.

Mr. Wylene then pointed to the new draft language in section 12005(aa)(3), which clarified that “enjoyment” and “availability” mean different things, and stated that he thought this was an expansion of the FEHA. Director Kish then commented that for public clarity he wanted to note that FEHA by its own terms is broader than the FHA. Mr. Wylene replied that there is significant case law on this question, and that FEHA can be broader than the FHA in some circumstances but in other circumstances is concurrent with the FHA.

Mr. Wylene also mentioned practical concerns with enforcing the prohibition on practices that reinforce or perpetuate segregated housing patterns, as the draft language would deem inaction that perpetuates housing discrimination a FEHA violation, and questioned whether there was statutory support for this provision. Mr. Wylene noted that Assembly Bill 686, supported by Rural County Representatives of California, is currently in the legislative process, and if enacted would indicate legislative intent that would be relevant to the current draft regulations.

Mr. Wylene also sought additional clarification on the causality requirement for the prima facie case in a discriminatory effects case.

Finally, regarding the example of waiving city fees for clean-up, Mr. Wylene stated that he had conducted case law research on the issue and found some case law on extension of time, but did not find any specific examples of waivers on abatement fees.

Lauren DiMartini, Bay Area Legal Aid: Ms. DiMartini commented that she appreciated the Council’s work, and that her clients at Bay Area Legal Aid, who frequently suffer from housing discrimination, will greatly benefit from these regulations as they will provide critical guidance and help empower their clients to uphold their housing rights.

Whitney Prout, California Apartment Association: Ms. Prout commented on the discussion between the Council and Ms. DeLair regarding the example language on felony or misdemeanor driving convictions in section 12266(b)(2), on page 38. Ms. Prout expressed concern about the adoption of the example language at this meeting, as there may be circumstances under which a misdemeanor driving offense is a directly related conviction. Ms. Prout asked for additional discussion on the matter before the Council incorporates the language.

Renee Williams, National Housing Law Project: Ms. Williams expressed her gratitude towards the Council for its work, stated that the regulations will be a beacon for the rest of the country in protecting tenants and others from discrimination, and urged the Council to adopt the regulations in their current form. Ms. Williams

also addressed some specific comments made by Mr. Wylene. First, Ms. Williams stated that FEHA is a floor, not a ceiling, and the Council can draft regulations that are more protective than federal law, including the discriminatory effect standard. Ms. Williams also stated that the National Housing Law Project supported the language on the discriminatory effects burden shifting standard.

Madeline Howard, Western Center on Law and Poverty: Ms. Howard stated her agreement with previous commenters' appreciation for the Council's work and support of the draft language. Ms. Howard commented that the clarity of the regulations will be helpful for both tenants and property owners. Ms. Howard stated that the Council has been extremely thoughtful in responding to the many comments that it has received, and encouraged the Council to adopt the current draft language soon.

This concluded the public comment on the agenda item. The Council agreed to break for lunch before resuming.

C. Action by Council

The Council resumed the meeting after lunch. Chair Mandelbaum stated that this discussion would involve finalizing any modifications to the current draft before voting on initiating a 15-day comment period.

Councilmembers Schur and Iglesias discussed what amendments they wanted to make before voting on initiating a 15-day comment period and enumerated a long list of revisions. The Council moved, seconded, and unanimously voted to adopt Attachment B as amended and initiate a 15-day comment period.

VIII. Consideration of 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 C: Modified Text of Proposed Employment Regulations Regarding Criminal History, the California Family Rights Act, and the New Parent Leave Act

A. Public Comment

Chair Mandelbaum introduced the agenda item and stated that the subcommittee had made a number of proposed modifications in response to public comment, which Chair Mandelbaum then described as follows:

In section 11017.1(a), the subcommittee clarified that the prohibition on any inquiry regarding criminal history before a conditional offer of employment has been made applies to internet searches directed at the criminal history, in addition to more formal background checks. In subsection (a)(3), the subcommittee added a paragraph addressing the concerns identified by the studio teacher's union and Motion Picture Association of America so that the language addresses contexts such as hiring halls where the hiring practice is fragmented. In subsection (b)(6), which lists applicable local ordinances, the subcommittee added one ordinance from the City of Richmond, which prohibits employers from inquiring or considering any kind of criminal history at all, with a few specific exceptions. On page 30, the subcommittee also added clarifying references to the New Parent Leave Act notice.

Councilmember Ortiz clarified for the record that subsection (a)(3) is not a carve-out, but rather a clarification for union halls and similar arrangements that the background check has to be narrowly tailored to a specific position, and that this subsection is not to be construed as a way to get around the law.

Councilmember Brodsky asked for clarification on a few points, which the Council discussed. The Council first

clarified that this section would apply to staffing agencies if those agencies were staffing a particular position, citing language saying that generalized assessments for a broad range of positions would not likely meet the individualized assessment criteria. Discussion with Chair Mandelbaum, Director Kish, and the Council clarified that in hiring hall situations, employers must choose from the list of vetted employees without conducting an additional background check on prospective workers who have been cleared by the temp agency or hiring hall.

Director Kish asked whether the regulations as written would allow an employer to conduct a separate background check so long as they go through their own conditional offer process. Chair Mandelbaum stated that this was intentional, and the Council discussed potential issues with this process, including where multiple parties conduct screenings and reach different results. Councilmember Iglesias noted a typo on the bottom of page 1, as “section” should be plural and not singular, and commented that he also found the section hard to follow. Councilmember Iglesias also stated that his interpretation of the language was that when selecting an individual from hiring hall, an employer does not need to separately undergo the conditional offer process, but if the employer chooses to do so, it needs to follow the regulations.

Chair Mandelbaum stated that the regulation are broader than that and if an employer considers criminal history at all, they need to do so according to the regulations. Councilmember Schur suggested breaking that paragraph into two subparagraphs with more detailed explanations of an employer who wants to do an additional search. Councilmember Brodsky also suggested using a different verb than “undergo” in the sentence saying that, “an employee does not need to undergo the conditional offer.”

Councilmember Schur asked about how temp agencies would comply with the regulations, and the Council discussed. Director Kish said that an employer utilizing a temp agency would describe the restrictions for the position that they needed a temp worker to fill, the temp agency would go through the compliance process in the same manner as any employer, and after this process was complete the employer would have to select from the pre-screened group of candidates. Councilmember Brodsky expressed concern over the fact that employers would be able to select from a prescreened list of candidates without having to make a conditional offer, and the Council discussed how a fragmented hiring process could comply with the regulations. Additionally, Councilmember Schur expressed concern about an employer screening applicants out once a temp worker is on a list but before the employer selects them for a given job. Councilmember Iglesias asked about the definition of “conditional offer,” and the Council confirmed that this had not been defined. Councilmember Schur brought up whether there is a difference of process between when an individual employer makes an offer to a prospective employee and when an employer selects an individual worker from a list provided by a hiring hall or temp agency, and the Council discussed what “conditional offer” would mean in that context. Chair Mandelbaum then suggested revisiting the item after the 15-day public comment period, and the Council concurred.

B. Public Comment

Will Abernathy, Morgan, Lewis, & Bockius: Mr. Abernathy commented on two sections of the regulations in regards to the New Parent Leave Act. Mr. Abernathy began by stating that the legislative intent behind the New Parent Leave Act was to expand on the California Family Rights Act. Under Government Code section 12945.6(j), which states that when the CFRA regulations are within the scope of and not inconsistent with the NPLA, the CFRA regulations should be incorporated into the NPLA, and on page 23 of the current proposed regulations, section 11092(b)(1) states that although an employer does not have the right to require an employee to use accrued paid time off during an otherwise unpaid portion of NPLA leave, an employee may elect to do so. Mr. Abernathy stated that as the NPLA does not specifically proscribe this conduct, and it is allowed under the CFRA, this sentence in (b)(1) should be removed. If an employee takes NPLA leave and their employer grows such that it would fall under CPRA, the employer could require an employer to use personal time or vacation time. Mr. Abernathy states that consistency between the CFRA and NLPA would help clarify the legal

expectations for employers and employees.

Mr. Abernathy also commented on section 11089(d)(2) on page 14, saying that for the purpose of CFRA leave but not NPLA leave, an employer may refuse to reinstate a key employee as defined in those regulations, and that this language should be removed for consistency. Mr. Abernathy stated that this could impose a cost on small employers.

Chair Mandelbaum asked for Mr. Abernathy to resubmit the comments during the 15-day comment period, and to check to ensure that all pages were present. In addition, Chair Mandelbaum replied that there is no key employee provision in the NPLA, and the language is different in the CFRA and NPLA regarding employee leave mandates. As most of the other text is identical, the Council understands these changes to have been made deliberately by the legislature. In response, Mr. Abernathy stated that the absence of this language does not proscribe the conduct, even if the language is not entirely consistent with the CFRA.

Eva DeLair, Legal Services for Prisoners with Children: Regarding the Council's discussion of preliminary offers, Ms. DeLair stated that the purpose of AB 1008 was to require employers to consider a potential employee's entire qualifications and history before first learning about their conviction history. An employer choosing from a list of prospective employees would be a step backward, as the underlying problem that AB 1008 sought to solve was that employers were summarily rejecting all prospective employees on the list who have criminal convictions. Ms. DeLair also noted that positions filled by workers through temp agencies are often not actually temporary, as many workplaces, such as warehouses, are largely staffed by employees from temp agencies on an ongoing basis. Ms. DeLair also commented that many temporary workers are working in low-paid positions and have a strong need for the protections of the DFEH.

The Council then discussed Ms. DeLair's comments. Chair Mandelbaum commented that there are circumstances where an employer needs to hire an employee on less than 10 days' notice and that this would not necessarily violate the regulations. Ms. DeLair replied that in this situation the temp agency or hiring hall could simply not look at criminal history. Director Kish agreed with Ms. DeLair that there is a problem with employers currently asking temp agencies and hiring halls for lists of workers with no criminal history without justification, but also stated that this would be prohibited under the new regulations.

Councilmember Ortiz commented that joint employment liability is relatively easy to show in California, making it more likely that there will be accountability if an employee is denied a position in violation of the regulations. Councilmembers Schur and Brodsky discussed their concerns that employees could reject prospective employees from a hiring hall or temp agency list based on personal preference after they have already been screened, as opposed to making an offer before considering criminal history. The Councilmembers also expressed the need for greater clarity about what a "conditional offer" means when an employer selects employees from a list provided by a hiring hall or temp agency.

After additional discussion about how lists from hiring halls and temp agencies fit into the regulations, Ms. DeLair then continued her public comment, stating that AB 1008 is intended to require an employer to wait until they had actually made an employment offer before checking conviction history, and that an employer screening an employee on a list provided by a hiring hall or temp agency before giving an employee a preliminary offer would be a violation of AB 1008. Ms. DeLair also discussed how the requirement that an employer provide a conditional offer before checking the prospective employee's conviction history is very important in creating a paper trail necessary to assist with enforcement.

Beth Avery, National Employment Law Project: Ms. Avery commented that the Council's discussion today had been very helpful in explaining the meaning of the draft regulations, and that she looked forward to

submitting additional written comments. Ms. Avery also stated that the National Employment Law Project is another co-sponsor of AB 1008, had concerns similar to those stated by Ms. DeLair, and asked that the Council work towards answering the question raised in this meeting and incorporate that into the regulatory language.

In response to the concerns expressed by the Councilmembers regarding employers requesting that temp agencies only send lists of individual without any criminal convictions, Ms. Avery confirmed that this would be a violation of AB 1008, and stated that having a conditional offer and individualized assessment is important in making sure that prospective employees with conviction histories are not removed from temp agency or hiring hall lists in violation of AB 1008. Ms. Avery also stated her concerns that temp agencies, after learning that a worker in their agency has a criminal conviction, will have that worker either sit in the pool without ever being referred, or that client employers will either receive information on conviction history from the hiring hall or temp agency or will do their own background check. In addition to helping individuals with a conviction history “get their foot in the door,” one of the underlying goals of AB 1008 was to inform individuals that they are being rejected because of their conviction history, as rejected prospective employees often never learn the reason why they are not hired. For this reason, the preliminary offer process must take place, and if a client employer does intend to run an additional background check, that employer must inform the employee and have the entire AB 1008 compliance process.

In regards to Ms. DeLair’s comments on the presumption of an individualized assessment, Ms. Avery stated the presumptive defense that employer could raise is already part of the relocations in other places. Chair Mandelbaum replied that while the presumption of an individualized assessment may be a best practice, he does not believe that it rises to the threshold of adding an additional requirement not in the statute.

Ms. Avery also stated that if an employer did not conduct an individualized assessment, a complainant would be asked to prove a negative. Therefore, if there is no written assessment, there should be a rebuttable presumption that no individualized assessment occurred.

Ms. Avery also discussed a proposed change that was not adopted to subsection (c)(2)(b), on page 3, requiring an employer to provide a copy of the information that they used in the process. In response to a question from the Council about the oral or written form of notification for rejection, Ms. Avery stated that a concern was that an employer would reject a prospective employee due to information found on the internet without a clear source, which could make it very difficult for employees to respond to the conviction.

Councilmember Iglesias expressed his concern about the different contexts of an employer making a conditional offer as opposed to an agent, and that the Council should make this distinction clear, and that it might be necessary to educate temp agencies about potential joint liability.

C. Action by Council

The Council moved, seconded, and unanimously voted to adopt Attachment C as amended and initiate a 15-day comment period.

IX. Discussion Regarding Public Hearing on Civil Rights in California’s Central Valley Councilmember Tim Iglesias and Councilmembers

Councilmember Iglesias began the discussion on the public hearing on civil rights in the Central Valley. The goal of that hearing was to conduct outreach to a part of the state that is sometimes less publicized, and to see what the Council could do to further civil rights in the region. Councilmember Iglesias gave context to how various civil rights housing violations occur and what they look like in Central Valley. The Councilmembers

found that many of the civil rights violations which were discussed during that meeting are the types of violations that the proposed regulations seek to address, but others had not previously received sufficient attention like caste discrimination in the Southeast Asian community. Councilmember Ortiz suggested that after the Council finishes working on the current rulemaking actions, the Council consider working on “know your rights” informational resources, or contacting the Judicial Council regarding updating these resources. Councilmember Iglesias also noted the importance of immigrant rights to the Council’s work in the Central Valley, and would like to address housing protections for immigrants in the next round of regulations.

Councilmember Ortiz reiterated the importance of access to justice and asked the Council to consider what they can do to help bring resources to underserved areas, such as Riverside and San Bernardino.

Councilmember Schur agreed with the comments of the previous Councilmembers and thought that the hearing was very useful. Councilmember Schur noted that many members of the public expressed that it was the first time they felt like they had been heard. Councilmember Schur also agreed that that the Council should consider doing similar outreach in other parts of the state, such as the southern inland and northern part of the state.

Councilmember Cisneros expressed interest in similar outreach in the Inland Empire or the far north region of the state. Regarding access to justice, Councilmember Cisneros asked if the Council could ask the state bar to look at where attorneys are based, as previous analysis showing a dearth of attorneys outside major coastal cities, but there is no current or recent data about attorney distribution.

The Council additionally discussed the access to justice issue, and Director Kish pointed to the decline in statewide DFEH offices from 11 to 5, with none in Orange County or San Diego County, and that DFEH is still working on adopting the use of Skype to extend its reach. Director Kish also noted the importance of conducting basic targeted outreach to advocacy groups who don’t know about DFEH. Finally, Director Kish mentioned that this meeting had demonstrated the importance of outreach, and that he had requested designated outreach funding from the Governor’s Office.

X. Report on Emergency Regulations Regarding Gender-Neutral Facility Signage
Councilmembers Dale Brodsky and Lisa Cisneros

Councilmember Brodsky confirmed that the current emergency regulations expire in August, and were put in place because OSHA had regulations in place which were inconsistent with the requirements for gender-neutral signage on portable toilets in construction sites and fields. Councilmember Cisneros further stated that OSHA had not started revising its regulation.

XI. Report on Regulations Regarding Religious Creed and Age Discrimination
Councilmembers Lisa Cisneros and Joseph Ortiz

Councilmember Cisneros updated the Council on the subcommittee’s work and stated that Councilmember Ortiz is drafting language related to age discrimination and she continues to work on religious creed discrimination language.

XII. Report on Government Code Section 11135 Regulations
Councilmembers Dale Brodsky and Dara Schur

Councilmember Brodsky gave the report from subcommittee on 11135 regulations, stating that the subcommittee is currently reviewing a draft, and is intending to place a draft on the agenda of the next meeting.

XIII. Further Public Comment

Chair Mandelbaum asked for any remaining public comments on any topic.

Corinne Green, Transgender Law Center: Ms. Green acknowledged and appreciated DFEH's follow through on the issue of gender-neutral signage, and reiterated how important the issue is for transgender people. Ms. Green stated that progress on the issue is impressive, as many people are aware of the law, although there is a continuing need for education campaigns. Ms. Green also stated that she is available to answer questions and assist the Council in any other way.

Guadalupe (Lupe) Estrada: Ms. Estrada spoke in Spanish with the assistance of Rosaline, a translator, about experiencing persistent discrimination during her job as a fieldworker due to being transgender. This discrimination included being told that she was a man by her supervisor and forced to use men's restrooms, being told not to go to use the restroom when other people were around, being forced to use restrooms that were very dirty and had no paper, being denied access to any restrooms, and being forced to relieve herself in a creek or river, and being denied jobs. Ms. Estrada stated that she repeatedly complained to the human resources office, but they refused to take action. Ms. Estrada stated an employer demanded to see her birth certificate in order to check her assigned gender. Ms. Estrada also stated that she had been misgendered at a hospital, even when she corrected the hospital employees. Ms. Estrada stated that the discrimination that she had experienced was so serious and pervasive that she had considered suicide.

Chair Mandelbaum thanked Ms. Estrada for sharing her story, and said that the Council had just finished regulations that would address the issues that she had experienced. Chair Mandelbaum also stated that what she had experienced was unquestionably illegal, and suggested that she get in touch with DFEH and the Transgender Law Center.

Rosaline: After translating for Ms. Estrada, Ms. Rosaline also spoke of seeing and experiencing significant discrimination for being transgender while at her job as a fieldworker. Ms. Rosaline stated that crew leaders were uneducated about transgender employees, and that when she became a crew leader she tried to assist transgender workers, but had seen transgender workers suffering from serious discrimination, including having to relieve themselves in the fields after they were denied access to restrooms. She also stated that the companies would fail to communicate information about the rights of transgender employees to workers and crew leaders.

Director Kish also commented that the discrimination that the two commenters had experienced was illegal, and offered them his card. Director Kish acknowledged that moving forward on a complaint is very difficult, and expressed his hope that they work with the DFEH if they do decide to move forward. Director Kish then repeated his comments in Spanish. Councilmember Cisneros spoke to both commenters in Spanish, thanking them for sharing their story with the Council and saying that they had given the Council important information about civil rights violations in California.

XIV. Adjournment

Chair Mandelbaum adjourned the meeting at approximately 4:00 PM.

Date: July 30, 2018

CHAYA MANDELBAUM
Chair

ELLIOT CAVNAUGH
DFEH Summer Law Clerk