



Department of Fair Employment & Housing Fair Employment and Housing Council

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FAIR EMPLOYMENT AND HOUSING COUNCIL

Meeting of January 21, 2022

Minutes

Remote Meeting

Councilmembers Present

Gabriel Sandoval, Chairperson
Dale Brodsky, Councilmember
Hellen Hong, Councilmember
Tim Iglesias, Councilmember
Adetunji O. Olude, Councilmember
Dara Schur, Councilmember
Julie Wilensky, Councilmember
Kevin Kish, DFEH Director and Ex Officio member

DFEH Staff Present

Adam Romero, DFEH Deputy Director of Executive Programs
Rachael Langston, DFEH Legislative and Regulatory Counsel
Mariel Block, DFEH Legislative and Regulatory Counsel

Others Present

About 48 members of the public

I. Call to Order and Roll Call

Chair Sandoval welcomed guests to the FEH Council's 46th meeting and called it to order. He then turned the meeting over to DFEH Legislative and Regulatory Counsel, Rachael Langston, who conducted roll call.

II. Welcome and Introduction of Guests

Chair Sandoval announced that the Council meeting would be livestreamed on the Council's website via Zoom 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 or using Zoom chat or using the "Raise Hand" function and can find the Attachments to the Agenda on the website.

Chair Sandoval then acknowledged Department leaders and members, including Adam Romero, DFEH Deputy Director of Executive Programs; and Rachael Langston, DFEH Legislative and Regulatory Counsel. He also introduced Mariel Block, who recently joined as DFEH Legislative and Regulatory Counsel. Ms. Block then introduced herself to the Council and the public.

III. Review of the Agenda

Chair Sandoval reviewed the agenda for the meeting.

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

- Report from Director Kish
- Consideration of Proposed Modifications to Employment Regulations Regarding Criminal History
- Update from the Council's other subcommittees

IV. Approval of the Minutes

Attachment A: Minutes from November 9, 2021 Meeting of the Fair Employment and Housing Council

Chair Sandoval reviewed the minutes of the November 9, 2021 meeting. During that meeting, the Council considered and voted to adopt Changes Without Regulatory Effect to the California Family Rights Act Regulations (2 CCR 11087 et seq.) and heard updates from the Council's other subcommittees.

Chair Sandoval asked for public comments on the minutes, and receiving none, the Council voted to approve the minutes unanimously.

V. Councilmembers' Reports

Chair Gabriel Sandoval and Councilmembers

None.

VI. Department of Fair Employment and Housing Report

Kevin Kish, Director, Department of Fair Employment and Housing

Director Kish reported that the fair housing regulations were approved by the Office of Administrative Law and went into effect on January 1, 2022 and announced the opportunity to register for the Department of Fair Employment and Housing's free webinar series covering how the regulations will affect Californians. Director Kish then announced the changes without regulatory effect to the California Family Rights Act regulations were also approved by the Office of Administrative Law and there is an updated regulatory notice which employers are required to post in the workplace to inform employees of their right to family and medical leave. He then highlighted a fact sheet that was recently released by the department regarding the housing rights of in-home childcare providers.

Director Kish announced that we successfully completed the first year of pay data reporting and are now entering the second year. To report the second year of pay data, DFEH's California Pay Data Reporting portal will be open beginning February 1, 2022, and the deadline to report pay data will be April 1, 2022.

Director Kish also announced that DFEH has posted their 2020 annual report on the DFEH website.

VII. Consideration of Proposed Modifications to Employment Regulations Regarding Criminal History

Chair Gabriel Sandoval and Councilmember Julie Wilensky

[Attachment B: Proposed Modifications to Employment Regulations Regarding Criminal History](#)

A. Discussion by Council

Councilmember Wilensky noted that the subcommittee has drafted potential modifications to the Fair Employment and Housing Act employment regulations regarding criminal history and was seeking approval to begin the rulemaking process.

The subcommittee proposed modifications, including adding an introduction to provide an overview of the regulation; adding a subsection on the Work Opportunity Tax Credit to provide guidance for employers seeking those credits on how to do so while still complying with the Fair Chance Act; clarifying edits to the existing regulations, which includes reorganizing the order of subsections and breaking some subsections into paragraphs and subparagraphs for clarity; adding subheadings for clarification; adding references to DFEH forms as a helpful tool; adding additional examples of evidence of rehabilitation or mitigating circumstances to paragraph; correcting any typing or grammatical errors and changing any inconsistencies in language throughout the document; and creating a separate section for definitions generally applicable to the regulation.

Councilmember Iglesias suggested placing the definitions at the beginning of the document, with Councilmember Brodsky in agreement, while also suggesting the definitions be placed underneath the introduction. Councilmember Wilensky noted that this suggestion will be considered further during the official rulemaking process.

Councilmember Iglesias suggested revising subsection (e) such that the language regarding “factual inaccura[cy]” parallels earlier subsections regarding what types of evidence a person who is disqualified can present. Councilmember Wilensky noted that this suggestion will be considered further during the official rulemaking process.

Councilmember Hong suggested adding more language to include the option of contacting someone electronically, Councilmember Wilensky acknowledged the suggestion but needs to review the statute to see what it states regarding the form of notice.

Councilmember Hong suggested adding “case managers” to the list of people who can provide character rehabilitation.

B. Public Comment

Noah Lebowitz, California Employment Lawyer’s Association Regulations Committee: Mr. Lebowitz suggested including a chart in the initial statement of reasons or otherwise within the notice package designating the the proposed modifications as either substantive or reorganizational without substantive change.

Molly Lao, Legal Aid at Work: Ms. Lao suggested considering adding clarifying language in paragraph (a)(4), inserting additional language explaining the scope of exemptions set forth therein; defining in (a)(4)(D) the laws that restrict employment based on criminal history; modifying the notice required in paragraph (f)(4)(D) such that, if more than one conviction is reflected on a background check, the employer must specify which conviction was disqualifying for the position and why; and adopting language clarifying that all relief available under the FEHA is available under the Fair Chance Act; and consider entering into cross filing agreements with local jurisdictions.

C. Action by Council

The Council moved, seconded, and unanimously approved a motion to propose regulations with the amendments that have been proposed by the Committee as identified by Councilmember Wilensky.

VIII. Update from the Reasonable Accommodations for Associational Disabilities Subcommittee
Councilmembers Dale Brodsky and Adetunji Olude

A. Discussion by Council

Councilmember Olude stated there are no new developments to report and inquired whether the department had any additional information regarding the status of the regulations.

Director Kish stated that the department did not have additional information to provide on this matter. He explained that the proposed regulations regarding associational accommodations, as well as other regulations impacting multiple agencies and departments, undergo extensive review by the administration and require significant coordination with other departments within the executive branch.

B. Public Comment

None.

IX. Update from the Criminal History & Employment Regulations Subcommittee
Chair Gabriel Sandoval and Councilmember Julie Wilensky

A. Discussion by Council

Chair Sandoval stated that, with the exception of the drafted proposed modifications to regulations discussed earlier in the meeting, there are no new developments to report.

B. Public Comment

None.

X. Update from Government Code Section 11135 Regulations Subcommittee
Councilmembers Dale Brodsky and Dara Schur

A. Discussion by Council

Councilmember Schur reported that the notice package is still under review by the Administration.

B. Public Comment

None.

XI. Update from the Hate Violence Subcommittee
Chair Gabriel Sandoval and Councilmember Dale Brodsky

A. Discussion by Council

Chair Sandoval stated the subcommittee has been working with DFEH and their Deputy Director of Executive Programs, Adam Romero, on ways to identify opportunities for education on hate violence and how to prevent it. The subcommittee has drafted a letter to send to law enforcement agencies to provide them with information

regarding other ways in which an individual can receive assistance if the law enforcement agency is unable to move forward with a criminal case.

Councilmember Iglesias suggested adding the term “civil remedies” to the letter alongside the term “resources” to inform the reader of all the possible options and to avoid confusion.

Councilmember Hong raised the question if the letter would be sent via email, and if so, suggested adding hyperlinks to documents and resources.

Chair Sandoval stated the subcommittee will move forward with the letter, and Councilmember Brodsky advised there may be further edits for grammar, spelling etc.

B. Public Comment

None.

XII. Update from the Algorithms and Bias Hearing Subcommittee

Councilmembers Tim Iglesias and Hellen Hong

A. Discussion by Council

Councilmember Hong stated the subcommittee has been meeting with DFEH staff, specifically Rachael Langston and Mariel Block, to talk about the possibility of proposed language on how to update the FEHA employment regulations to include relevant algorithm modifications. The committee is early in the process, but they hope to be able to propose some modifications to update the language within the next several months.

Councilmember Iglesias informed that they hope to do the same with the housing regulations.

B. Public Comment

None.

XIII. Update from the California Family Rights Act Regulations Subcommittee

Councilmember Dale Brodsky

A. Discussion by Council

Councilmember Brodsky announced the Office of Administrative Law (OAL) approved the changes without regulatory effect that the Council voted on in the previous meeting. The OAL did require one revision to the definition of “parent-in-law” – it now matches the definition in the statute.

B. Public Comment

None.

XIV. Discussion Regarding Additional Subcommittee Assignments

Chair Gabriel Sandoval and Councilmembers

A. Discussion by Council

Councilmembers Schur and Iglesias proposed a subcommittee to review, harmonize, and clarify the housing regulations and volunteered to serve on the committee.

Councilmember Brodsky proposed a subcommittee on the Unruh Act. Councilmembers Olude and Wilensky volunteered to serve on the committee.

Councilmember Iglesias proposed a subcommittee on real estate lending and restrictive covenants. Councilmembers Iglesias and Hong volunteered to serve on the committee as well.

Chair Sandoval proposed a new subcommittee regarding community education outreach. Chair Sandoval and Councilmember Hong both volunteered to serve on the committee.

B. Public Comment

None.

C. Action by Council

The Council moved, seconded, and unanimously voted to approve a motion to adopt the subcommittee assignments.

XV. Further Public Comment

None.

XVI. Adjournment

Chair Sandoval adjourned the meeting at approximately 2:37 PM.

Date: March 14, 2022

GABRIEL SANDOVAL
Chair

TAYLOR WHITLEY
DFEH Office Technician