



## Civil Rights Department

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### CIVIL RIGHTS COUNCIL

#### Minutes from Council Meeting on December 13, 2022, 2 p.m.

#### Remote Meeting

Members of the public joined with the below information:

<https://us02web.zoom.us/j/83834664678>

and/or 1-669-444-9171 and Meeting ID 83834664678

#### Councilmembers Present

Gabriel Sandoval, Chairperson

Dale Brodsky, Councilmember

Hellen Hong, Councilmember

Tim Iglesias, Councilmember

Adetunji O. Olude, Councilmember

Dara Schur, Councilmember

Julie Wilensky, Councilmember

#### Civil Rights Department Staff Present

Adam Romero, CRD Deputy Director of Executive Programs Division

Becky Monroe, CRD Deputy Director of Strategic Initiatives and External Affairs

Lily Harvey, CRD Assistant Deputy Director of Outreach and Education

Rachael Langston, CRD Senior Legislative and Regulatory Counsel

Alec Watts, CRD Assistant Deputy Director of Research and Strategic Initiatives

#### Others Present

An estimated 62 members of the public participated virtually

#### Call to Order and Roll Call

Chair Gabriel Sandoval

Chair Sandoval welcomed guests to the Civil Rights Council's 49th meeting and called it to order. He then turned the meeting over to CRD Legislative and Regulatory Counsel, Rachael Langston, who conducted roll call.

#### Welcome

Chair Gabriel Sandoval

Chair Sandoval welcomed members of the public and announced that the Council meeting would be livestreamed on the Council's website via Zoom. Members of the public were also able to access the meeting agenda and attachments on the Council's website. Chair Sandoval then acknowledged CRD staff in attendance.

## **Review of the Agenda**

Chair Gabriel Sandoval

Chair Sandoval reviewed the agenda for the meeting.

## **Approval of the Minutes**

Chair Gabriel Sandoval and Councilmembers

[Attachment A: Minutes from the August 10, 2022, Meeting of the Civil Rights Council](#)

Chair Sandoval reviewed the minutes of the August 10, 2022 meeting and asked for edits, amendments, and public comments on the minutes and received none. Councilmember Iglesias moved and Councilmember Schur seconded the motion to approve the minutes. The Council voted to approve the minutes unanimously.

## **Councilmembers' Reports**

Chair Gabriel Sandoval and Councilmembers

No reports.

## **Civil Rights Department Report**

Civil Rights Department Executives

CRD Deputy Director of Executive Programs Division Adam Romero introduced Lily Harvey, the new CRD Assistant Deputy Director of Outreach and Education. Assistant Deputy Director Harvey then detailed recent work the Outreach and Education Unit has done, and the unit's goals for the future, which include more Councilmember collaboration. She also highlighted new materials created by the unit.

## **Informational Presentation: CA vs. Hate Resource Line and Network**

Becky Monroe, Deputy Director Strategic Initiatives and External Affairs, Civil Rights Department

Deputy Director Monroe announced that the CA vs. Hate hotline has had a soft launch and is now available for people to utilize. She highlighted the goals of the resource line and network and gave a brief background of the hotline and stated that they are open to feedback regarding improvements. The phone number for the hotline is active statewide and the number is 833-8NO-HATE. Deputy Director Monroe explained that law enforcement has been responsive and receptive to the hotline because it serves as an additional resource. Deputy Director Monroe explained she has been actively pursuing new relationships with CBOs. Regarding Chair Sandoval's suggestion of the need for increased collaboration with educational institutions, Deputy Director Monroe explained that they have been working with the Department of Education on this issue and brainstorming creative ways they can reach students.

## **Public Comment**

Bruce Wolf: If an incident is against the law but not a crime, how is it classified and enforced? Chair Sandoval responded by saying it can potentially rise to the level of a civil rights violation under state law, for example, under the Ralph Civil Rights Act. Deputy Director Monroe agreed.

## **Informational Presentation: Commission on the State of Hate**

Alec Watts, Assistant Deputy Director of Research and Strategic Initiatives, Civil Rights Department

Assistant Deputy Director Watts introduced himself and gave information regarding the Commission on the State of Hate. He explained the government statute that created the Commission and the purpose of the Commission, which includes research, education, and advisory duties. Councilmember Schur mentioned that there are several collaborations that can be made between the Council and the Commission. Chair Sandoval agreed. Councilmember Hong asked to discuss coordination and resource sharing between the Council and the Commission. Councilmember Iglesias agreed and suggested adding it to the agenda for the next meeting, and Councilmember Schur agreed. Councilmember Brodsky emphasized needing to be aware of duplicated efforts in terms of efficiency and collaboration.

## **Public Comment**

**Brenda Lebsack:** Asked how can protected classes like skin color or pregnancy be based on perception and not on actual biology. She also asked if everyone's chat ability was disabled.

## **Consideration of Proposed Modified Text of Proposed Modifications to Employment Regulations Regarding Criminal History**

Chair Gabriel Sandoval and Councilmember Julie Wilensky

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

#### A. Discussion by Council

Councilmember Wilensky shared the status of the package within the rule-making process. She then gave an overview of the proposed modifications. Several Councilmembers suggested wording and formatting corrections, as well as additional clarification of terms such as "initial individualized assessment." Councilmember Iglesias suggested further guidance for employers on what to do if they get corrected information from applicants regarding their criminal history.

Councilmember Wilensky stated they will take all the suggestions into consideration.

#### B. Public Comment

**Molly Lau:** Lau thanked the Council for their consideration of previous comments and suggestions. In subsection (c)(1)(b)(1)(a), she asked that the Council clarify that employers are expected to know that a wide range of conduct may result in a conviction under particular criminal laws, and convictions may be based on indirect liability for other people's actions e.g., aiding and abetting liability. She also requested in the subsection that the Council includes a consideration of whether the applicant pleaded nolo contendere, no contest, pleaded guilty, or was convicted after trial and that employers should know that 94-97% of defendants enter into federal or state plea bargains not as an admission of guilt but because of the coercive power of large sentences. She also suggested in subsection (c)(1)(b)(2) the Council elaborate that employers cannot consider any such conviction when 7 or more years have

passed since release from incarceration. She also recommended that the Council consider adding language that will help protect applicants with any arrest or conviction record whose background checks typically take longer than those for individuals without records.

**Joshua Kim:** Kim noted that some employers revoke a conditional job offer when a criminal history background check is delayed. He noted that neither the existing or proposed regulation makes it clear that the revocation violates the Fair Chance Act, and it would be helpful to add a new subsection to address this.

**Brenda Lebsack:** Lebsack agreed with Councilmember Schur noting that words really matter. Small changes in word choice make a difference in meaning.

**Bruce Wolf:** Wolf submitted several comments on disclosing disability or health records, stating that following the ADA on disclosure is probably the best approach to take, and noted that placing definitions in the front is standard constitutional construction. Wolf also asked if the goal of these amendments is to increase disclosure and exposure to employers.

#### C. Action by Council

Councilmember Wilensky moved to go forward with the modified text for another 15-day comment period, and Councilmember Iglesias seconded the motion. The Council unanimously approved the motion.

### **Consideration of Modified Text of Proposed Modifications to Employment Regulations Relating to Religious Creed Discrimination and Accommodations**

Councilmembers Dale Brodsky and Julie Wilensky

[Attachment C: Modified Text of Proposed Modifications to Employment Regulations Relating to Religious Creed Discrimination and Accommodations](#)

#### A. Discussion by Council

Councilmember Brodsky stated that the subcommittee has taken into consideration all of the suggestions from the previous meeting and explained the new proposed modifications. Among these, she highlighted the proposed modifications to the definition of “undue hardship.” Several Councilmembers suggested clarifying language and changes to grammar, word choice, and formatting. Councilmembers discussed the need to further clarify “undue hardship.”

#### B. Public Comment

**Alan Reinach, Executive Director, Church State Council:** Reinach stated that a reasonable accommodation is one that eliminates the conflict between the religious practice and job requirement. “Reasonable” does not apply to the person requesting the accommodation—whether what the person is asking for is reasonable—but rather “reasonable” goes to whether the employer can or cannot eliminate the conflict. If they can’t eliminate the conflict, then it’s an undue hardship. He stated that item six may not be helpful. Reinach then commented on item eight, stating that it’s counterproductive and would make cases more difficult than they already are.

Councilmember Brodsky then cited an explanation of undue hardship that focuses on the impact on workers.

**Brenda Lebsack:** Lebsack stated that the term “undue hardship” needs to be specifically defined because people of faith are feeling like their environment is becoming more hostile due to affirming different genders. They are questioning whether, if they don’t use particular pronouns citing their faith as reasoning, they will be accused of hate.

Chair Sandoval noted that a general rule the Council does not provide legal advice or counsel to individuals who are providing public comment, but encouraged her to look at federal, state, and local laws and policy guidance because there is information regarding the items she addressed.

**Bruce Wolf:** Wolf emphasized the importance of taking all public comments into consideration during this period and hearing everything stakeholders have to say regarding the topic.

#### C. Action by Council

Councilmember Hong moved to go forward with the modified text as proposed and to begin the formal rule-making process and 45-day comment period. Councilmember Olude seconded the motion. The Council unanimously approved the motion.

### **Consideration of Proposed Changes Without Regulatory Effect to the FEHA Regulations to Implement Department Name Change, Addition of “Designated Person” to the California Family Rights Act, and Addition of “Reproductive Health Decisionmaking” as a Protected Characteristic under the FEHA**

Deputy Director Adam Romero

[Attachment D: Explanatory Statement for Changes Without Regulatory Effect to the FEHA Regulations](#)

[Attachment E: Proposed Text for Changes Without Regulatory Effect to the FEHA Regulations](#)

#### A. Discussion by Council

Deputy Director Romero explained a proposal from the department to implement three statutory changes, effective July 1, 2022 or January 1, 2023:

- SB 189 changed the department name and council name to Civil Rights Department and Civil Rights Council;
- AB 1041 amended the CFRA to add a new designated person for whom an employee can take eligible CFRA leave; and
- SB 523 added “reproductive health decision making” to the FEHA’s employment provisions as a protected characteristic.

Councilmember Iglesias asked if the new protected characteristic and term “reproductive health decision making” will require some regulations.

#### B. Public Comment

No public comment.

C. Action by Council

Councilmember Hong moved to adopt the proposed changes without regulatory effect to the FEHA regulations. Councilmember Iglesias seconded the motion. The Council unanimously approved the motion.

**Update from the Reasonable Accommodations for Associational Disabilities Subcommittee**

Councilmembers Dale Brodsky and Adetunji Olude

A. Discussion by Council

Councilmember Olude stated that the potential for regulations on reasonable accommodations for associational disabilities is still under review by the administration and the subcommittee is continuing research and responding to inquiries from the administration. She also expressed that the subcommittee wants to expand their mandate to address other topics related to family and medical leave, including but not limited to potential regulation on CFRA pregnancy disability leave and changes to bereavement leave related to the passage of AB 1949.

B. Public Comment

No public comment.

C. Action by Council

Councilmember Brodsky moved to expand the subcommittee's mandate, and Councilmember Schur seconded the motion. The Council unanimously approved the motion.

**Update from the Criminal History & Employment Regulations Subcommittee**

Chair Gabriel Sandoval and Councilmember Julie Wilensky

A. Discussion by Council

Chair Sandoval stated the subcommittee had no update beyond proposed modified text considered earlier.

B. Public Comment

No public comment.

**Update from Government Code Section 11135 Regulations Subcommittee**

Councilmembers Dale Brodsky and Dara Schur

A. Discussion by Council

Councilmember Schur reported that the proposed regulations would be moving forward and that the subcommittee anticipates they will be able to submit the package to OAL in January or February.

B. Public Comment

No public comment.

**Update from the Hate Violence Subcommittee**

Chair Gabriel Sandoval and Councilmember Dale Brodsky

A. Discussion by Council

Chair Sandoval shared that the subcommittee has had meetings with Deputy Director Monroe and Assistant Deputy Director Harvey regarding how they can help with outreach. He then stated they have been speaking with other stakeholders regarding how they can be more involved.

B. Public Comment

No public comment.

**Update from the Algorithms and Bias Hearing Subcommittee**

Councilmembers Tim Iglesias and Hellen Hong

A. Discussion by Council

Councilmember Iglesias reported that the subcommittee is currently in the stages of considering public comments that were made in the previous public hearing in preparation for the next meeting. Councilmember Hong encouraged written comments. The rulemaking process was then clarified for the Councilmembers by Deputy Director Romero.

B. Public Comment

**Bruce Wolf:** Wolf stated that substantive changes that are not agendized for action must be continued to the next meeting for action.

**Update from the Housing Regulations Review Subcommittee**

Councilmembers Dara Schur and Tim Iglesias

A. Discussion by Council

Councilmember Schur stated that the regulations have been through the first administrative step and staff intends to submit them to OAL by the end of the year or in early January.

B. Public Comment

No public comment.

### **Update from the Unruh Act Subcommittee**

Councilmembers Adetunji Olude and Julie Wilensky

#### A. Discussion by Council

Councilmember Olude stated the subcommittee is still researching possible regulations under the Unruh Act, and that they have conducted stakeholder outreach.

#### B. Public Comment

No public comment.

### **Update from the Community Education and Outreach Subcommittee**

Chair Gabriel Sandoval and Councilmember Hellen Hong

#### A. Discussion by Council

Councilmember Hong reported that the subcommittee has met with CRD staff to provide input on the department's strategic plan for outreach and education. Chair Sandoval reiterated to the Council the opportunity to participate in education and community outreach. Councilmember Iglesias expressed interest in participating in outreach, and especially with outreach to other civil rights groups in the state, such as local human relation commissions. Assistant Deputy Director Harvey then stated she would be in touch with Councilmembers to gauge interest in participating in outreach efforts.

#### B. Public Comment

**Brenda Lebsack:** Lebsack asked how members of the Council were chosen and what the qualifications are. Lebsack also asked a question regarding the change in definitions to gender and gender identity from a 2017 Council hearing.

### **Further Public Comment**

No further public comment.

### **Adjournment**

Chair Sandoval adjourned the meeting at approximately 5:02pm.