CIVIL RIGHTS COUNCIL
PROPOSED MODIFICATIONS TO EMPLOYMENT REGULATIONS
REGARDING AUTOMATED-DECISION SYSTEMS
INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS
Title 2. Administration
Div. 4.1. Civil Rights Department
Chapter 5. Civil Rights Council
Subchapter 2. Discrimination in Employment

As it relates to employment, the Fair Employment and Housing Act (FEHA or the Act) (Gov. Code § 12900 et seq.) prohibits harassment and discrimination because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person.

Pursuant to Government Code section 12935(a), the Civil Rights Council (Council) has authority to adopt necessary regulations implementing FEHA. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code section 12900 et seq.

On April 30, 2021, the Council held a civil rights hearing on algorithms and bias. The Council received expert testimony and public comment on the discrimination that can result – in employment, housing, healthcare, and other contexts – from the use of algorithmic, artificial intelligence, and machine-learning tools as part of automated-decision systems. In brief, an automated-decision system, in the employment context, is a computational process that makes decisions or facilitates human decision-making in a way that impacts applicants and/or employees. (See proposed section 11008.1(a) below for the Council's proposed full definition of "automated-decision system.") With regard to employment, experts explained that algorithmic, artificial intelligence, and machine-learning tools are commonly used in every stage of the hiring process, including when recruiting applicants, screening resumes and applications, and analyzing and making recommendations based on applicant interviews, as well as during employment. (*See* Press Release: DFEH Holds Civil Rights Hearing on Algorithms and Bias (May 6, 2021) https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2021/05/Algorithms-Hearing-Press-Release.pdf (last accessed Sept. 5, 2023); FEHC: April 30, 2021, Algorithms and Bias Hearing (Apr. 30, 2021) https://www.youtube.com/watch?v=IQ_6f9lMUfU (last accessed Sept. 5, 2023).

In its recent *Blueprint for an AI Bill of Rights*, the White House explained:

> "Algorithmic discrimination" occurs when automated systems contribute to unjustified
> different treatment or impacts disfavoring people based on their race, color, ethnicity,
> sex (including pregnancy, childbirth, and related medical conditions, gender identity,
> intersex status, and sexual orientation), religion, age, national origin, disability, veteran
> status, genetic information, or any other classification protected by law. Depending on

the specific circumstances, such algorithmic discrimination may violate legal protections.

(Office of Science and Technology Policy, The White House, *Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People* (Oct. 2022), "Definitions," p. 10 (hereafter "*White House Blueprint for AI Bill of Rights*").)

The U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice have issued guidance related to civil rights and the use of automated-decision systems. In 2021, the EEOC launched an "Artificial Intelligence and Algorithmic Fairness Initiative" (https://www.eeoc.gov/ai). As part of this initiative, the EEOC issued guidance explaining that employers' use of automated-decision systems "may disadvantage job applicants and employees with disabilities," and thus "employers may risk violating federal … laws that protect individuals with disabilities" by using such systems. (Equal Employment Opportunity Commission, The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees (May 2022) https://www.eeoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence (hereafter "EEOC Guidance").) Similarly, in 2022, the U.S. Department of Justice (DOJ) explained: "While [hiring] technologies may be useful tools for some employers, they may also result in unlawful discrimination against certain groups of applicants." (U.S. Dept. of Justice, *Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring* (May 12, 2022) https://beta.ada.gov/assets/_pdfs/ai-guidance.pdf (last accessed Oct. 21, 2022), p. 1 (hereafter "DOJ Guidance").)

The Council proposes the following regulatory modifications after careful consideration of input from experts and the public during the Council's April 21, 2021 hearing described above, as well as during several subsequent meetings of the Council at which these proposed regulations, and earlier drafts, were discussed. The Council also carefully considered the expert reports, federal guidance, and other relevant materials cited in this Initial Statement of Reasons. In addition, the Council proposes to make several regulatory modifications to further implement Senate Bill 807 (Wieckowski, Stats. 2021, Ch. 278), which in pertinent part amended Government Code section 12946, related to record maintenance requirements.

The specific purpose of each proposed regulation or amendment and the reason it is necessary are described below. The problem that a particular proposed regulation or amendment addresses and its intended benefits are outlined under each subsection, as applicable, when the proposed change goes beyond mere clarification. Some changes are not explained below as they are non-substantial, including correcting grammatical and formatting errors, renumbering and re-lettering provisions, deleting unnecessary citations, and eliminating jargon.

Article 1. General Matters.

§ 11008. Definitions.
The purpose of this section is to define terms used throughout the regulations implementing the employment provisions of FEHA, and the proposed modifications add definitions for terms used throughout the existing and proposed regulations.

§ 11008(a). "Adverse impact."
The Council proposes to define the term "adverse impact" to include, but not be limited to, "the use of a facially neutral practice that negatively limits, screens out, tends to limit or screen out, ranks, or prioritizes applicants or employees on a basis protected by the Act." This is necessary for clarity and succinctness because "adverse impact" appears through the proposed regulations and in other current regulations. This definition is consistent with the usage of "adverse impact" in sections 11010(b) and 11017.1(f) of these regulations. In drafting this definition, the Council reviewed the Uniform Guidelines on Employment Selection and Procedure (29 C.F.R. 1607 (1978)), which are cited elsewhere in the regulations as they relate to "adverse impact." (See, e.g., Cal. Code Regs., tit. 2, §§ 11010 and 11017.1.) These federal guidelines define "adverse impact" as "[a] substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a *race, sex, or ethnic group*." (29 C.F.R. 1607.16(B) (emphasis added).) The Council broadened this definition to include all characteristics protected under FEHA. The Council included a clearer list of the activities that are involved in "hiring, promotion, or other employment decision[s]" and which could have an adverse impact on individuals with a protected characteristic.

The Council proposes language in this definition stating that "adverse impact" is synonymous with "disparate impact." This addition is necessary for clarity because the regulations sometimes use disparate impact and adverse impact interchangeably.

§ 11008(b). "Agent."
The Council proposes to define the term "agent" to mean "[a]ny person acting on behalf of an employer, directly or indirectly, including, but not limited to, a third party that provides services related to making hiring or employment decisions (such as recruiting, applicant screening, hiring, payroll, benefit administration, evaluations and/or decision-making regarding requests for workplace leaves of absence or accommodations) or the administration of automated-decision systems for an employer's use in making hiring or employment decisions." This addition is necessary for clarity and to succinctly define a term used throughout the regulations.

The main clause of the definition ("[a]ny person acting on behalf of an employer, directly or indirectly") is based on the FEHA's definition of employer to include agents. (Gov. § 12926(d); see also *Raines v. U.S. Healthworks Med. Grp.* (2023) 15 Cal. 5th 268.)

In the subordinate clause of the definition, the Council proposes to clarify that an agent includes "a third party that provides services related to making hiring or employment decisions (such as recruiting, applicant screening, hiring, payroll, benefit administration, evaluations and/or decision-making regarding requests for workplace leaves of absence or accommodations) or the administration of automated-decision systems for an employer's use in making hiring or employment decisions." In the Council's expertise, the examples in the proposed definition are services that are commonly provided by third parties to employers. This inclusion is necessary to clarify that these types of third parties are included in the definition of agent when they act, directly or indirectly, on behalf of an employer. Moreover, it is necessary to include these third parties in the definition because employers themselves are often not privy to the details of such systems' programming nor what biases may result from that programming. Such information is typically maintained by the developer, vendor, or other entity providing the automated-decision

system software; these third parties often treat this information as a trade secret. (See, e.g., *Houston Federation of Teachers, Local 2415 v. Houston Independent School District* (S.D. Tex. 2017) 251 F.Supp.3d 1168, 1171, 1177-79 (school district's third-party vendor generated performance scores using "complex algorithms, employing sophisticated software and many layers of calculations," and the vendor treated the algorithms and software as trade secrets and refused to divulge them to the school district, rendering it unable to verify or audit the technology").

§ 11008(f)(h). "Employment Agency."
The Council proposes to amend the definition of "employment agency" to clarify that such an agency means "[a]ny person undertaking, for compensation, services to identify, screen and/or procure job applicants, employees, and opportunities to work, including persons undertaking these services through the use of an automated-decision system." The first addition ("services to identify, screen, and/or") is necessary to clarify the scope of actions that may be performed by an employment agency. The second addition is necessary to clarify that "employment agency" includes persons that perform the services of an employment agency through the use of automated-decision systems. In the Council's expertise, these services are increasingly performed by employment agencies on behalf of particular employers.

§ 11008(m). "Proxy."
The Council proposes to define the term "proxy" to mean "a technically neutral characteristic or category correlated with a basis protected by the Act." This is necessary for clarity and to succinctly define a term used throughout the proposed regulations. This definition is consistent with the discussion of proxies in *Johnson Controls, Inc. v. FEHC* (1990) 218 Cal.App.3d 517, n. 7, which noted that a "neutral trait or condition" may be "but a proxy for membership in [a] protected class itself." Automated-decision systems use of proxies may result in discrimination, even if unintended. See, e.g., White House Blueprint for an AI Bill of Rights, What Should be Expected of Automated Systems, p. 26 ["In many cases, attributes that are highly correlated with demographic features, known as proxies, can contribute to algorithmic discrimination. In cases where use of the demographic features themselves would lead to illegal algorithmic discrimination, reliance on such proxies in decision-making (such as that facilitated by an algorithm) may also be prohibited by law."].)

§ 11008.1. Automated-Decision Systems
The purpose of this section is to define the term "automated-decision system" as well as terms related to such a system.

§ 11008.1(a). "Automated-Decision System."
The Council proposes to define the term "automated-decision system" to mean "[a] computational process that screens, evaluates, categorizes, recommends, or otherwise makes a decision or facilitates human decision-making that impacts applicants or employees." The definition also explains that "[a]n Automated-Decision System may be derived from and/or use machine-learning, algorithms, statistics, and/or other data processing or artificial intelligence techniques." This definition is necessary for clarity and succinctness because "automated-decision system" appears throughout the proposed modified regulations. The definition is consistent with federal guidance reviewed by the Council while drafting these regulations. (See

DOJ Guidance at p. 1; EEOC Guidance, "Background" (using the term "artificial intelligence"; 15 U.S.C. 9401(3) (using the term "artificial intelligence"); Blueprint for an AI Bill of Rights at p. 10 (using the term "automated system.")

Subsection (a)(1) provides examples of tasks performed by automated-decision systems, including but not limited to "[u]sing computer-based tests, such as questions, puzzles, games, or other challenges to [m]ake predictive assessments about an applicant or employee; [m]easure an applicant's or employee's skills, dexterity, reaction-time, and/or other abilities or characteristics; and/or [m]easure an applicant's or employee's personality trait, aptitude, attitude, and/or cultural fit." The other tasks listed in (a)(1) are "[d]irecting job advertisements or other recruiting materials to targeted group," "[s]creening resumes for particular terms or patterns," and/or "[a]nalyzing facial expressions, word choice, and/or voice in online interviews." This non-exhaustive list of examples is consistent with DOJ's and EEOC's recent guidance on this issue as well as language from the National Artificial Intelligence Initiative (on which the EEOC Guidance relies in part) and the White House's Blueprint for an AI Bill of Rights. (See DOJ Guidance at p. 1; EEOC Guidance, "Background"; 15 U.S.C. 9401(3); Blueprint for an AI Bill of Rights at p. 10.) These examples are necessary for clarity and to illustrate the various tasks that automated-decision systems may perform. Because automated-decision systems are evolving, these examples are illustrative and non-exhaustive. In the Council's expertise, these examples illustrate common tasks that automated-decision systems perform.

Subsection (a)(2) clarifies that the term "automated-decision system" "excludes word processing software, spreadsheet software, and map navigation systems." This is necessary to clarify the scope of the term "automated-decision system" to not include common computational programs that are neither developed nor used for the purpose of automatically rendering or impacting decisions regarding hiring or other aspects of employment. This exclusion is consistent with Executive Order 13960 of December 3, 2020, regarding "Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government." The order establishes guidelines and principles for government use of artificial intelligence; however, it states that it does not apply to "AI embedded within common commercial products, such as word processors or map navigation systems." (85 Fed. Reg. 78939 at § 9(d)(i).)

§ 11008.1(b). "Algorithm."
The Council proposes to define the term "algorithm" to mean "[a] set of rules or instructions a computer follows to perform calculations or other problem-solving operations." This is necessary for clarity and succinctness because "algorithm" appears throughout the proposed regulations. The Council's proposed definition is consistent with federal guidance and other materials reviewed by the Council while drafting these regulations. (DOJ Guidance at p. 1; EEOC Guidance, "Background.")

The Council proposes to further elucidate the term "algorithm" by providing examples of the sorts of tasks algorithms perform, including detecting patterns in datasets and automating decision-making based on those patterns and datasets. These examples are necessary to illustrate the various tasks that algorithms perform. Because the uses of algorithms is continually evolving, these examples are illustrative and non-exhaustive. In the Council's expertise, these examples illustrate common tasks that algorithms perform."

§ 11008.1(c). "Artificial Intelligence."

The Council proposes to define the term "artificial intelligence" to mean "[a] machine-learning system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions." This is necessary for clarity and succinctness because "artificial intelligence" appears through the proposed regulations. The Council's proposed definition is consistent with the EEOC's recent guidance on this issue, which, in turn, relied upon Congress's definition of this term as set forth in the National Artificial Intelligence Initiative Act of 2020. (*See* EEOC Guidance, "Background"; 15 U.S.C. § 9401(3).)

§ 11008.1(d). "Automated-Decision System Data."

The Council proposes to define the term "automated-decision system data" to mean "[a]ny data used in the process of developing and/or applying machine-learning, algorithms, and/or artificial intelligence that is utilized as a part of an automated-decision system." This is necessary for clarity and succinctness because "automated-decision system data" appears through the proposed regulations.

The Council proposes to further elucidate the term "automated-decision system data" by providing examples of data that constitute "automated-decision system data," which "includ[es] but [is] not limited to [d]ata used to train a machine-learning algorithm utilized as a part of an automated-decision system," "[d]ata provided by individual applicants or employees, or that includes information about individual applicants or employees"; and "[d]ata produced from the application of an automated-decision system operation." This is necessary because these types of data are often relevant to whether the inquiries and decisions resulting from or relating to the use of an automated-decision system evince disparate treatment or have an adverse impact on applicants or employees.

§ 11008.1(e). "Machine Learning."

The Council proposes to define the term "machine learning" to mean "[t]he ability for a computer to use and learn from its own analysis of data or experience and apply this learning automatically in future calculations or tasks."." This definition is necessary for clarity and succinctness because "machine learning" appears through the proposed regulations. The Council's proposed definition is consistent with Congress's definition of this term as set forth in the National Artificial Initiative Act of 2020. (15 U.S.C. § 9401(11). It is also consistent with the definition incorporated by reference into the EEOC Guidance.

§ 11009. Principles of Employment Discrimination.

The purpose of this section is to establish principles of employment discrimination, and the proposed modifications clarify the relevance of automated-decision systems within these principles.

§ 11009(b). Liability of Employers.

The Council proposes to add "employer or other" before the second mention of "covered entity," such that § 11009(b) would read: ") Liability of Employers. In view of the common law theory of respondeat superior and its codification in California Civil Code section 2338, an employer or other covered entity shall be liable for the discriminatory actions of its supervisors, managers or

agents committed within the scope of their employment or relationship with the <u>employer or other covered entity or</u>, as defined in section 11019(b), for the discriminatory actions of its employees where it is demonstrated that, as a result of any such discriminatory action, the applicant or employee has suffered a loss of or has been denied an employment benefit." This is necessary to conform this definition to the existing definition in current section 11008(f) (which would be renumbered as 11008(g) in the proposed regulations). This is also necessary for consistency because the term "employer or other covered entity" is used throughout the regulations.

§ 11009(f).
The Council proposes to add subsection (f), stating that it is unlawful for an employer or other covered entity to use selection criteria, including but not limited to an automated-decision system, where such use has an adverse impact or constitutes disparate treatment against applicants or employees on the basis of one or more characteristics protected under FEHA. This addition is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of such a system or the use of other selection criteria.

The subsection also clarifies that an employer or other covered entity can, as a defense, demonstrate that the use of the automated-decision system or other selection criteria was job-related and consistent with business necessity and that there was no less discriminatory, equally effective policy or practice. This addition is necessary to clarify that existing defenses against disparate treatment and/or adverse impact also apply where such treatment or impact results from an employer or other covered entity's use of an automated-decision system or other selection criteria.

Additionally, the Council proposes explaining in this subsection that evidence that an employer or other covered entity subjected an automated-decision system or other selection criteria to anti-bias testing or made similar efforts to avoid unlawful discrimination, including evidence of the quality, recency, and scope of such efforts, is relevant to an employer's or other covered entity's defense. This addition is necessary because it clarifies evidence specific to automated-decision systems that may be relevant to an employer's or other covered entity's defense.

§ 11013. Recordkeeping.
The purpose of this section is to address recordkeeping requirements under FEHA, and the proposed modifications clarify that an employer or other covered entity must maintain records relating to automated-decision systems. The proposed modifications also implement Government Code section 12946(a), as amended by Senate Bill 807 (Wieckowski, Stats. 2021, Ch. 278).

§ 11013(c). Preservation of records.
The Council proposes to state that the personnel or other employment records that an employer or other covered entity must maintain all "automated-decision system data," a term defined in the Council's proposed section 11008.1(e). This modification is necessary to clarify that existing

regarding record-maintenance requirements apply to automated-decision system data. Maintaining documentation on the information used to train the system and the information the system produces is essential to assess whether disparate treatment or an adverse impact resulted from the use of the system.

The Council proposes to modify subsection (c) to clarify that an employer or other covered entity must maintain records for a period of at least four years after the document was created or the personnel action related to the document occurred, whichever is later. This proposal is necessary to implement Government Code section 12946(a) as amended by Senate Bill 807 (Wieckowski, Stats. 2021, Ch. 278) (hereinafter "SB 807"), which requires employers and other entities covered by FEHA to maintain certain records for a minimum of four years. (The statute previously required covered entities to maintain such records for only a minimum of two years.)

The Council proposes to strike, "However, the State Personnel Board shall maintain such records and files for a period of one year." This is necessary to implement SB 807, which eliminated the statutory basis for this sentence in the regulation.

The Council proposes to replace the language "made or kept" with "created or received by" to match the language used in Government Code section 12946(a). This is necessary to ensure clarity and consistency with FEHA.

§ 11013(c)(4).
The Council proposes to amend the language relating to the required maintenance and preservation of relevant records and files after a respondent learns that an individual has filed a complaint. This amendment is necessary to implement Government Code section 12946(b) as amended by SB 807, which requires that respondents who learn or receive notice of a complaint must maintain such records until the later of the first date after the period of time for filing a civil action as expired, or the first date after the complaint has been fully and finally disposed of and all related proceedings have been terminated.

§ 11013(c)(4)(B)(6).
The Council proposes to state that "records and files relevant" to a complaint include "automated-decision system data," the definition of which the Council proposes to add as section 11008.1(d). This is necessary to clarify that, in addition to applications, forms, and test papers, automated-decision system data used in hiring or other employment practices is significant and relevant information to allegations of unlawful employment actions.

§ 11013(c)(4)(C)(7).
The Council proposes to add language to this subsection in order to implement Government Code section 12946(b) as amended by SB 807, which revised language regarding full and final disposal of a matter for purposes of record-keeping. This is necessary for clarity and to implement the provisions of this new legislation.

§ 11013(c)(8).
The Council proposes to add paragraph (8) to subsection (c), stating in the first sentence:

Any person who sells or provides an automated-decision system or other selection criteria to an employer or other covered entity, or who uses an automated-decision system or other selection criteria on behalf of an employer or other covered entity, must maintain relevant records.

This is necessary to clarify that existing recordkeeping obligations apply to whoever sells, provides, or uses selection criteria, including but not limited to an automated-decision system, on behalf of an employer or other covered entity. In the Council's expertise, this proposed provision will aid in dispelling the common *misunderstanding* that third parties or others who provide, sell, or use selection criteria to/on behalf of employers or other cover entities are *not* subject to the recordkeeping requirements of FEHA and these regulations. Such clarification is also necessary to address, in the Council's expertise, the common lack of transparency surrounding the programming, data, and other criteria used to train an automated-decision system and used by an automated-decision system to make a hiring or employment decision, and the fact that employers may not hold such records in some circumstances.

The Council proposes to continue paragraph (8) as follows:

Relevant records include, but are not limited to, automated-decision system data used or resulting from the application of the automated-decision system for each such employer or other covered entity to whom the automated-decision system is sold or provided or on whose behalf it is used. Relevant records also include training set, modeling, assessment criteria, and outputs from the automated-decision system.

This is necessary to provide clarity regarding the array of record types in the automated-decision systems that are subject to FEHA's recordkeeping requirements, thereby dispelling confusion.

The Council proposed to conclude paragraph (8) by stating: "These records must be maintained for at least four years following the last date on which the automated-decision system was used by the employer or other covered entity." This is necessary to apply the general rule in subsection (c) to this particular context addressed in this paragraph.

Article 2. Particular Employment Practices.

§ 11015. Definitions.
The purpose of this section is to provide definitions used in this article, and the proposed amendment clarifies the significance of automated-decision systems to one existing term.

§ 11015(d). "Application."
The Council proposes to amend the definition of "application" to clarify that an application may include an automated-decision system, such as an online job application that uses an automated-decision systems to conduct an initial screening of candidates prior to any human review of applicant materials. This modification is necessary to clarify the full scope of devices that can constitute an application

§ 11016. Pre-Employment Practices.

The purpose of this section is to address FEHA's application to pre-employment practices, and the proposed amendments clarify the section's application to automated-decision systems.

§ 11016(a)(2). Prohibited Recruitment Practices.
The Council proposes to amend paragraph (2) of subsection (a) to clarify that prohibited recruiting practices may "include but [are] not limited to practices accomplished through the use of an automated decision system," if the practices restrict, exclude, classify, express a preference for, or communicate job opportunities in a way intended to exclude individuals based on a characteristic protected under the Act. This modification is necessary to clarify that an employer or other covered entity may be liable for unlawful recruitment practices made through, resulting from, or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system or the use of other selection criteria.

§ 11016(b)(1) Pre-employment Inquiries – Limited Permissible Inquiries.
The Council proposes to amend paragraph (1) of subsection (b) to clarify that unlawful pre-employment inquiries made through the use of an automated-decision system are prohibited. This addition is necessary to clarify that an employer or other covered entity may be liable for making an unlawful pre-employment inquiry through the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system or other selection criteria.

§ 11016(c)(3)(A).
The Council proposes modifying this subsection to clarify that in addition to limiting or screening out applicants based on their schedule, online application technology used to "rank" or "prioritize" applicants based on their schedules may also have an adverse impact on applicants based on their religious creed, disability, or medical condition. This addition is necessary to clarify that sorting applicants based on schedules desirable to an employer, while perhaps facially neutral, can be unlawful to the extent it has an adverse impact against applicants with a characteristic protected under the Act.

The Council also proposes replacing the term "disparate impact" with "adverse impact." This is necessary for consistency and to relate back to the proposed definition of "adverse impact" in section 11008(a).

§ 11016(c)(5). Automated-Decision Systems.
The Council proposes to add paragraph (5), a non-exhaustive list of tasks often performed by an automated-decision system – namely, measurements of a range of abilities and/or characteristics – that can result in an adverse impact on people with disabilities or other characteristics protected under the Act. The proposed paragraph states:

> Automated-Decision Systems. The use of an automated-decision system that, for example, measures an applicant's skill, dexterity, reaction time, and/or other abilities or characteristics may constitute unlawful disparate treatment or have an unlawful adverse

impact on individuals with certain disabilities or other characteristics protected under the Act.

This addition is necessary to clarify that the use of an automated-decision system to analyze and make decisions based upon facially neutral characteristics – such as certain skills or abilities – may result in unlawful discrimination based on a disability or another protected characteristic for which the neutral characteristic is a proxy. This addition is also necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for unlawful decisions made or actions taken without the recommendations or assistance of an automated-decision system or the use of other selection criteria.

§ 11016(d). Interviews <u>or Other Screening of Applicants.</u>
The Council proposes changing the title of this subsection from "Interviews" to "Interviews or Other Screening of Applicants," as well as adding "or other screening of applicants" following each mention of "interviews" in this subsection. These modifications are necessary to reflect the reality of the modern hiring process, which is not limited to in-person interviews but may involve screening through the use of automated-decision systems or other screening tools and may take place prior to or without an interview.

§ 11016(d)(1). Automated Decision Systems.
The Council proposes to add paragraph (d)(1), stating as follows:

> Automated-Decision Systems. An automated-decision system that, for example, analyzes an applicant's tone of voice, facial expressions or other physical characteristics or behavior may constitute unlawful disparate treatment of or have an unlawful adverse impact on individuals based on race, national origin, gender, or a number of other protected characteristics.

The proposed addition is necessary to clarify that the use of an automated-decision system to analyze and make decisions based upon facially neutral characteristics – such as expressions or tones of voice – may result in unlawful discrimination based on race, ethnicity, or another protected characteristic for which the neutral characteristic is a proxy. This addition is also necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for decisions made or actions taken without the recommendations or assistance of an automated-decision system or the use of other selection criteria.

§ 11017. Employment Selection.
The purpose of this section is to address FEHA's application to employment selection, and the proposed amendments clarify the section's application to automated-decision systems.

§ 11017(e). Permissible Selection Devices.
The Council proposes to add "automated-decision system" to this subsection's description of selection devices that, in certain circumstances, are permissible even though they have an

adverse impact. This addition is necessary to clarify that an automated-decision system may, in certain circumstances, be a permissible selection device under this subsection.

§ 11017.1. Consideration of Criminal History in Employment Decisions
The purpose of this section is to address the consideration of criminal history in employment decisions under FEHA, and the proposed amendments clarify the section's application to automated-decision systems.

§ 11017.1(a).
The Council proposes adding "or the use of an automated-decision system" to this subsection's list of means through which an employer may consider a job applicant's criminal history. This addition is necessary to clarify that an automated-decision system is an increasingly common means of inquiring about criminal history prior to making a conditional offer of employment and that the Act would prohibit such use unless particular exceptions apply.

§ 11017.1(d)(2)(C).
The Council proposes adding a subparagraph stating that, where an employer or other covered entity's decision to withdraw a conditional job offer involved the use of an automated-decision system, the employer or other covered entity must provide the applicant with a copy or description of the report or data resulting from or relating to the operation of the system, as well as information regarding assessment criteria employed by the system or other information related to the use of that system. This addition is necessary for clarity and to apply FEHA's requirements to the context of automated-decision systems.

§ 11017.1(d)(4).
The Council proposes adding a paragraph clarifying that "[t]he use of an automated-decision system, in the absence of additional processes or actions, does not constitute an individualized assessment" of an applicant. This addition is necessary to provide further guidance to employers and other covered entities regarding appropriate practices when conducting an individualized assessment to determine whether an applicant's conviction history has a direct and adverse relationship to the job for which the applicant is applying.

§ 11020. Aiding and Abetting.
The purpose of this section is to address liability under FEHA for aiding and abetting violations, and the proposed amendments would clarify the section's application to automated-decision systems.

§ 11020(b)
The Council proposes to add subsection (b) to state that the prohibitions in subsection (a) apply to the designer, developer, advertiser, vendor, or other provider of an automated-decision system to an employer or other covered entity, as well as to an individual who uses an automated-decision system on behalf of the employer or other covered entity. This is necessary to clarify that such entities may be liable under FEHA where the use of their automated-decision system constitutes unlawful disparate treatment or has an unlawful adverse impact on applicants or employees on a basis protected by FEHA.
The Council proposes to add paragraph (b)(1) to state that "[e]vidence of risk assessment, anti-

bias testing, and/or similar efforts to avoid unlawful discrimination … including the quality, recency, and scope of such efforts" is relevant to whether a party unlawfully aided or abetted employment discrimination through providing an automated-decision system to or using one on behalf of an employer or other covered entity. This is necessary to clarify that various types of anti-discrimination efforts are relevant to the determination of whether unlawful aiding or abetting occurred.

Article 4. National Origin and Ancestry Discrimination.

§ 11028. Specific Employment Practices.
The purpose of this article is to address FEHA's prohibition of national origin and ancestry discrimination, and the proposed amendments would clarify that practices prohibited under the section are likewise prohibited if they are conducted through or result from the use of an automated-decision system or other selection criteria.

§ 11028(b).
The Council proposes to amend this subsection to clarify that the prohibition against discrimination based on an applicant or employee's accent also applies where such discrimination occurs as a result of the employer or other covered entity's use of an automated-decision system or other selection criteria. This amendment is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system system or the use of other selection criteria.

The Council also proposes to amend this section to replace "Employment discrimination" with "Discrimination." This non-substantial amendment is necessary to make the text of this subsection more consistent with other subsections throughout this section.

§ 11028(c).
The Council proposes to amend this subsection to clarify that the prohibition against discrimination based on an applicant or employee's English proficiency also applies where such discrimination results from or relates to the employer or other covered entity's use of an automated-decision system or other selection criteria. This amendment is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from the use of an automated-decision system or other selection criteria, just as they may be liable for an action made or decision taken without the recommendation or assistance of the automated-decision system or the use of other selection criteria.

§ 11028(f)(3).
The Council proposes to add paragraph (3) to subsection (f), clarifying that the prohibition against discrimination based on an applicant or employee's immigration status also applies where such discrimination results from or relates to the employer or other covered entity's use of an automated-decision system or other selection criteria. This amendment is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria,

just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system or the use of other selection criteria.

§ 11028(g).

The Council proposes amending this subsection to clarify that the prohibition against discrimination on the basis that an applicant or employee holds a driver's license issued under Vehicle Code section 12801.9 also applies where such discrimination results from or relates to the employer or other covered entity's use of an automated-decision system or other selection criteria. This amendment is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system or the use of other selection criteria.

§ 11028(h).

The Council proposes amending this subsection to clarify that the prohibition against citizenship requirements that are merely pretext for national origin- or ancestry-based discrimination also applies where such discrimination results from or relates to the employer or other covered entity's use of an automated-decision system or other selection criteria. This amendment is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system or the use of other selection criteria.

§ 11028(k).

The Council proposes amending this subsection to clarify that the prohibition against height and/or weight requirements that result in unlawful discrimination also applies where such discrimination results from or relates to the employer or other covered entity's use of an automated-decision system or other selection criteria. This amendment is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system or the use of other selection criteria.

The Council also proposes replacing the term "disparate impact" with "adverse impact." This is necessary for consistency and to relate back to the proposed definition of "adverse impact" in proposed section 11008(a).

§ 11028(m).

The Council proposes to add subsection (m), clarifying that, unless job-related and consistent with business necessity, it is unlawful for an employer or other covered entity to use an automated-decision system or other selection criteria, where such use constitutes disparate treatment of or has an adverse impact on applicants or employees on the basis of their national origin or any proxy thereof. This addition is necessary to clarify that an employer or other

covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system or the use of other selection criteria.

Article 5. Sex Discrimination.

§ 11032. Pre-Employment Practices.
The purpose of this article is to address FEHA's prohibition of sex discrimination, and the proposed amendments would clarify that pre-employment practices prohibited under the section are likewise prohibited if they are conducted through or result from the use of an automated-decision system or other selection criteria.

§ 11032(b)(4).
The Council proposes adding paragraph (4) to subsection (b), clarifying that, unless job-related and consistent with business necessity, it is unlawful for an employer or other covered entity to use an automated-decision system or other selection criteria, where such use constitutes disparate treatment of or has an adverse impact on applicants or employees on the basis of sex. This addition is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable a decision made or action taken without the recommendation or assistance of an automated-decision system or the use of other selection criteria.

§ 11033. Employment Selection.
The purpose of this section is to address FEHA's prohibition against sex discrimination in employment selection, and the proposed amendments would clarify that prohibited employment practices under this section are likewise prohibited if they are conducted through or result from the use of an automated-decision system or other selection criteria.

§ 11033(f).
The Council proposes to add subsection (f), clarifying that, unless job-related and consistent with business necessity, it is unlawful for an employer or other covered entity to use an automated-decision system or other selection criteria, where such use constitutes disparate treatment of or has an adverse impact on applicants or employees on the basis of their sex or any proxy thereof. This addition is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system or the use of other selection criteria.

Article 6. Pregnancy, Childbirth or Related Medical Conditions.

§ 11038. Responsibilities of Covered Entities Other than Employers.
The purpose of this article is to address FEHA's protections related to pregnancy, childbirth, and related medical conditions, and the proposed amendments would clarify that employment

practices prohibited under this section are likewise prohibited if they result from or relate to the use of an automated-decision system or other selection criteria.

§ 11038(b).
The Council proposes to add subsection (b), clarifying that, unless job-related and consistent with business necessity, it is unlawful for an employer or other covered entity to use an automated-decision system or other selection criteria, where such use constitutes disparate treatment of or has an adverse impact on applicants or employees on the basis of their pregnancy or perceived pregnancy. This addition is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system or the use of other selection criteria.

§ 11039. Responsibilities of Employers.
The purpose of this section is to address an employer or other covered entity's obligations under FEHA relating to pregnancy, childbirth, or related medical conditions, and the proposed amendments would clarify that an unlawful failure to meet these obligations also exists if that failure results from or relates to the use of automated-decision systems or other selection criteria.

§ 11039(a)(1)(J).
The Council proposes to add subparagraph (a)(1)(J) to clarify that unlawful discrimination based on pregnancy or perceived pregnancy includes, but is not limited to, discrimination resulting from or relating to the use of an automated-decision system or other selection criteria. This addition is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system or the use of other selection criteria.

Article 7. Marital Status Discrimination.

§ 11056. Pre-Employment Practices.
The purpose of this section is to address FEHA's prohibition against unlawful pre-employment actions by an employer or other covered entity based on an applicant's marital status, and the proposed amendments would clarify that actions prohibited under the section are likewise prohibited if they are conducted through or result from the use of an automated-decision system or other selection criteria.

§ 11056(a).
The Council proposes clarifying that, unless a permissible defense applies, an inquiry relating to an applicant's marital status is unlawful, including where an employer or other covered entity makes such an inquiry through the use of an automated-decision system or other selection criteria. This addition is necessary to clarify that an employer or other covered entity may be liable for making an unlawful inquiry through the use of an automated-decision system or other

selection criteria, just as they may be liable for making an unlawful inquiry without the recommendation or assistance of an automated-decision system or the use of other selection criteria.

Article 8. Religious Creed Discrimination

§ 11063. Pre-Employment Practices.
The purpose of this section is to address FEHA's prohibition against unlawful pre-employment actions by an employer or other covered entity based on an applicant's religious creed, and the proposed amendments would clarify that actions prohibited under the section are likewise prohibited if they are conducted through or result from the use of an automated-decision system or other selection criteria.

§ 11063(b).
The Council proposes to add subsection (b), which clarifies that, unless job-related and consistent with business necessity, it is unlawful for an employer or other covered entity to use an automated-decision system or other selection criteria, where such use constitutes disparate treatment of or has an adverse impact on applicants or employees on the basis of their religious creed. This addition is necessary to clarify that an employer or other covered entity may be liable for unlawful discrimination resulting from or relating to the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the recommendation or assistance of an automated-decision system or the use of another selection criteria.

Article 9. Disability Discrimination.

§ 11070. Pre-Employment Practices.
The purpose of this section is to address FEHA's prohibition against unlawful pre-employment actions by an employer or other covered entity based on an applicant's disability, and the proposed amendments would clarify that actions prohibited under the section are likewise prohibited if they are conducted through or result from the use of an automated-decision system or other selection criteria.

§ 11070(a)(2).
The Council proposes adding to clarify that employers and other covered entities are prohibited from advertising or publicizing an employee benefit that discourages or is designed to discourage disabled applicants from applying, even where such advertisement or publicization was accomplished through the use of an automated-decision system or other selection criteria. This addition is necessary to address how FEHA applies to current recruitment practices involving automated-decision systems or other selection criteria.

§ 11070(b)(2).
The Council proposes clarifying that, unless a permissible defense applies, an inquiry likely to elicit information about a disability is unlawful, including where an employer or other covered entity makes such an inquiry through the use of an automated-decision system or other selection criteria. This addition is necessary to clarify that an employer or other covered entity

may be liable for making an unlawful inquiry through the use of an automated-decision system or other selection criteria, just as they may be liable for making an unlawful inquiry without the use of an automated-decision system or other selection criteria.

§ 11071. Medical and Psychological Examinations and Inquiries.
The purpose of this section is to provide guidance to employers regarding prohibited medical and psychological examinations and inquiries, and proposed amendments to this section would clarify common components of automated-decision systems that may constitute unlawful examinations and inquiries.

§ 11071(e).
The Council proposes to add subsection (e) to provide examples of procedures and tests that are often incorporated into automated-decision systems or other selection criteria and that may constitute unlawful medical or psychological examinations or inquiries. The proposed subsection is:

> (e) Medical or psychological examinations or inquiries can include, but are not limited to, the following:
> > (1) Personality-based questions, including but not limited to such questions included in an automated-decision system. Personality-based questions include, but are not limited to, tests or questions that measure any of the following:
> > > (A) optimism and/or positive attitudes;
> > > (B) personal or emotional stability;
> > > (C) extroversion or introversion; and/or
> > > (D) intensity.
> > (2) Puzzles, games, or other challenges that evaluate physical or mental abilities, including but not limited to gamified screens included in an automated-decision system.

This addition is necessary to clarify that an employer or other covered entity may be liable for making an unlawful medical inquiry through the use of an automated-decision system or other selection criteria, just as they may be liable for making an unlawful inquiry without the use of an automated-decision system or other selection criteria.

The proposed subsection also clarifies that puzzles, games, or other challenges that measure physical or mental abilities may constitute medical examinations or inquiries. This clarification is necessary to provide guidance regarding potential legal consequences of using these tools. In the Council's expertise, such games are commonly used and can screen out or otherwise discriminate against employees or applicants with disabilities. For instance, a test that requires an applicant or employee to click dots of various colors may be inaccessible to a person with color-blindness; a test that requires repeated tapping of particular keys may be inaccessible to a person with a mobility disability; and a test measuring reaction time could screen out people with disabilities affecting their processing speed. Physical or mental abilities evaluated through these tests may not reflect whether an applicant or employee is able to perform a particular position with or without accommodations. As such, the tests may not be job-related. If not job-related and unless an employer is able to establish another applicable defense for their use, they

would constitute impermissible medical inquiries. (*See* Gov. Code § 12940(e).)

§ 11072. Employee Selection.
The purpose of this section is to address an employer's obligations to applicants with disabilities during the hiring process, and proposed amendments would clarify that an unlawful failure to meet these obligations also exists if that failure results from or relates to the use of automated-decision systems or other selection criteria.

§ 11072(b)(1).
The Council proposes an amendment to clarify that the prohibited use of selection criteria under this paragraph includes the use of automated-decision systems and proxies, where the use of such systems or proxies screens out or tends to screen out applicants with disabilities. This amendment is necessary to clarify the application of this provision of FEHA to automated-decision systems and other selection criteria.

The Council further proposes clarifying an available defense to claims of adverse impact by adding that, in addition to job-relatedness and business necessity, an employer can establish that "there [was] no less discriminatory policy or practice that [would have] serve[d] the employer's goals as effectively as the challenged policy or practice." This is necessary for consistency with language throughout the regulations and for clarity.

The Council proposes other non-substantial changes, including replacing both "an employer or a covered entity" as well as "the covered entity" with the term "employer or other covered entity," which is defined in § 11008(a) of these regulations. These proposed changes are necessary for clarity and consistency.

§ 11072(b)(2). Qualification Standards and Tests Related to Uncorrected Vision or Uncorrected Hearing.
The Council proposes an amendment to clarify that the prohibited use of selection criteria under this paragraph includes the use of automated-decision systems and proxies, where the use of such systems or proxies is related to an applicant's or employee's uncorrected vision or hearing. This amendment is necessary to clarify the application of this provision of FEHA to automated-decision systems and other selection criteria.

The Council proposes other non-substantial changes, including replacing both "an employer or a covered entity" as well as "the covered entity" with the term "employer or other covered entity," which is defined in § 11008 of these regulations. These proposed changes are necessary for clarity and consistency.

§ 11072(b)(3).
The Council proposes amending this paragraph to clarify that prohibited testing criteria can include but are not limited to testing criteria applied through the use of an automated-decision system. This amendment is necessary to clarify the application of this provision of FEHA to automated-decision systems and other selection criteria.

§ 11072(b)(4).

The Council proposes amending this paragraph to clarify that prohibited tests of physical agility or strength may include but are not limited to tests administered as part of an automated decision system. This amendment is necessary to clarify the application of this provision of FEHA to automated-decision systems and other selection criteria.

§ 11072(b)(5).

The Council proposes amending this paragraph to explain that any employment test used or administered as part of an automated-decision system must meet the requirements of this paragraph such that it does not reflect an individual's disability where the effects of the disability are unrelated to the skills required for the particular job. This amendment is necessary to clarify the application of this provision of FEHA to automated-decision systems and other selection criteria.

§ 11072(b)(5)(F).

The Council proposes amending this subparagraph to clarify that the use of an automated-decision system, without more, does not constitute an individualized assessment of an applicant. This addition is necessary to provide further guidance to employers and other covered entities regarding appropriate practices when conducting an individualized assessment of an applicant or employee with a disability.

Article 10. Age Discrimination.

§ 11076. Establishing Age Discrimination.

The purpose of this section is to address FEHA's prohibition against age-based discrimination, and the proposed amendments would clarify that prohibited discrimination under this section is likewise prohibited if it is conducted through or results from the use of an automated-decision system or other selection criteria.

§ 11076(a).

The Council proposes to add language clarifying that facially neutral practices may be made through the use of an automated-decision system. This amendment is necessary to clarify the application of this provision of FEHA to automated-decision systems and other selection criteria.

§ 11079. Advertisements, Pre-employment Inquiries, Interviews and Applications.

The purpose of this section is to address FEHA's prohibition against unlawful pre-employment actions by an employer or other covered entity based on an applicant's age, and the proposed amendments would clarify that actions prohibited under the section are likewise prohibited if they are conducted through or result from the use of an automated-decision system or other selection criteria.

§ 11079(b). Pre-Employment Inquiries.

The Council proposes clarifying that, unless a permissible defense applies, an inquiry that would result in the direct or indirect identification of persons on the basis of age is unlawful, including where an employer or other covered entity makes such an inquiry through the use of an automated-decision system or other selection criteria. This modification is necessary to clarify that an employer or other covered entity may be liable for making an unlawful inquiry through

the use of an automated-decision system or other selection criteria, just as they may be liable for an unlawful decision made or action taken without the use of the automated-decision system or other selection criteria.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The Council relied upon the following technical, theoretical, or empirical studies, reports, or similar documents in proposing the adoption of these regulations:

1. The Office of Science and Technology Policy, Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People (Oct. 2022) https://www.whitehouse.gov/ostp/ai-bill-of-rights/ (last accessed Oct. 21, 2022).

2. Equal Employment Opportunity Commission, The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees (May 2022) https://www.eeoc.gov/laws/guidance/americans-disabilities-act-and-use-software-algorithms-and-artificial-intelligence (last accessed Oct. 21, 2022).

3. Reva Schwartz et al., NIST Special Publication 1270: Towards a Standard for Identifying and Managing Bias in Artificial Intelligence. The National Institute of Standards and Technology. (Mar. 2022) https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1270.pdf (last accessed Jun. 13, 2023).

4. Department of Justice, Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring (May 12, 2022) https://www.ada.gov/resources/ai-guidance/ (last accessed Mar. 27, 2024).

5. FEHC: April 30, 2021, Algorithms and Bias Hearing (Apr. 30, 2021) https://www.youtube.com/watch?v=IQ_6f9lMUfU (last accessed Oct. 21, 2022).

6. Executive Order 13960 of Dec. 3, 2020, 85 FR 78939.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Council has determined that no reasonable alternative it considered, or was otherwise brought to its attention, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Council invites comments from the public regarding suggested alternatives, where greater clarity or guidance is needed.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The proposed amendments, which clarify existing law without imposing any new burdens, will

not adversely affect small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The proposed amendments clarify existing law without imposing any new burdens. Their adoption is anticipated to benefit California businesses, workers, and the State's judiciary by clarifying and streamlining the operation of the law, making it easier for employees and employers to understand their rights and obligations and reducing litigation costs for businesses. Therefore, the Council has determined that these amendments will not have a significant adverse economic impact on business.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Council anticipates that the adoption of these regulations will not impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State because the regulations codify existing law into a digestible format and promote harmonious relations in the workplace without affecting the supply of jobs or ability to do business in California. The Council anticipates that adoption of the proposed amendments will benefit California businesses, workers, and the State's judiciary by clarifying and streamlining the operation of the law, making it easier for employeesand employers to understand their rights and obligations and reducing litigation costs for businesses. The Council does not anticipate that the proposed amendments will benefit the State's environment because they do not relate to or impact the environment.