



Civil Rights Department Civil Rights Council

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Attachment A

CIVIL RIGHTS COUNCIL

Minutes from Council Meeting on July 18, 2024, 10:00 a.m.

University of California Berkeley School of Law
Law Building #7200 (2763-2719 Bancroft Way)
Berkeley, CA 94704
Room 132

Members of the public joined remotely using the following information:

<https://us02web.zoom.us/j/88399120355>
or 1-669-900-6833 and Webinar ID: 883 9912 0355

Councilmembers Present

David Garcia, Chairperson
Jonathan Glater, Councilmember
Hellen Hong, Councilmember
Adetunji O. Olude, Councilmember
Julie Wilensky, Councilmember
Denny Chan, Councilmember
Kevin Kish, CRD Deputy Director, Ex Officio Councilmember

Civil Rights Department Staff Present

Adam Romero, Deputy Director of Executive Programs
Rachael Langston, Senior Legislative and Regulatory Counsel
Mariel Block, Senior Legislative and Regulatory Counsel
Alexandria Sadler, Senior Legislative and Regulatory Counsel
Suge Lee, Senior Legislative and Regulatory Counsel

Others Present

An estimated 54 members of the public participated virtually.

I. Call to Order and Roll Call

Chair David Garcia

Chair Garcia called the meeting to order. CRD Senior Counsel Mariel Block conducted roll call.

II. Welcome

Chair David Garcia

Chair Garcia welcomed members of the public and informed members of the public how to submit public comment.

III. **Review of the Agenda**

Chair David Garcia

Chair Garcia reviewed the agenda for the meeting.

IV. **Approval of Minutes**

Chair David Garcia

Chair Garcia reviewed the minutes from the March 21, 2024, meeting. He asked for edits, amendments, and public comment on the minutes and received none. The Council unanimously voted to approve the minutes.

V. **Councilmembers' Reports**

Chair David Garcia and Councilmembers

No Councilmember reports.

VI. **Civil Rights Department Report**

Civil Rights Department Executives

Deputy Director Romero gave the Civil Rights Department report. He highlighted the new hires in the Legislative and Regulatory Unit, and the new hire of the Assistant Deputy Director of the Outreach and Education Unit. He then announced the release of the 2022 annual report and highlighted some of its contents. Deputy Director Romero then spoke about three recent settlements the department achieved and provide an update on the CA vs. Hate resource line and network.

Chair Garcia asked if any of the reports made to the CA vs. Hate resource line and network are reported to law enforcement. Deputy Director Romero explained it can be an option if the person wanted to report it.

VII. **Public Hearing: Proposed Modifications to Employment Regulations Regarding Automated-Decision Systems**

Chair David Garcia and Councilmembers

Chair Garcia introduced the public hearing, explained the purpose, and explained the procedures and process for the hearing.

Councilmember Hong recognized the work of former and current subcommittee members and CRD staff, and also thanked everyone for previous public comments.

Kai On: Mr. On suggested the Civil Rights Council investigate California state and local law enforcement. He went on to describe issues he has faced with multiple law enforcement agencies regarding a serious matter and urged the Council to investigate.

Alonzo Martinez, Advisory Group Chair at the Professional Background Screening Association (PBSA):

Martinez urged the Council to explicitly exclude consumer reporting agencies from the definitions of “agent” and “employment agency” under proposed section 11008(b) and section 11008(h), respectively. He also suggested that rule-based decision making should be exempt from the scope of automated decision systems under 11008.1(a)(2) and that only systems with highly complex self-learning capabilities should fall under the regulation. Lastly, he requested that consumer reporting agencies should be exempt from anti-bias testing and aiding and abetting liability.

Concerned Citizen (Did not identify otherwise): The speaker expressed concerns with the Civil Rights Department’s handling of a particular complaint.

Ashley Hoffman, California Chamber of Commerce:

Hoffman expressed concern that the proposed regulations may conflict with efforts to regulate automated decision system and artificial intelligence in the Legislature, as well as draft regulations proposed by the California Privacy Protection Agency. She expressed the belief that these issues may be better addressed through elected officials in the Legislature. She also expressed concerns that the regulations are not simply clarifications but rather broaden existing law. In particular, she raised the concern that the definition of “adverse impact” in section 11008(a) is overbroad and creates a cause of action not currently recognized by the courts. She also raised the concern that the shift in the burden of proof to employers is contrary to existing law.

Ken Wang, California Employment Lawyers’ Association and Tech Equity Collaborative:

Wang raised concerns regarding the definition of automated decision systems under 11008.1 and urged the Council to refer to definitions contained in the State Administrative Manual and Governor Newsom’s AI Executive Order. He also suggested that the Council consider expanding the list of examples listed under the types of tasks that automated decision systems can perform, including the use of third-party data, and to resist adding any type of limiting language, such as “controlling factor” or “substantial factor,” in this definition. Wang also suggested that section 11009(f) regarding business necessity should be relocated to section 11010, the affirmative defense section. He also argued that a business necessity should not be available for intentional discrimination. Lastly, Wang stated that the burden of proof is properly on employers, who are best positioned to demonstrate that no less discriminatory alternative was available.

Regina DeAngelis, Association of California State Employees with Disabilities member:

DeAngelis recommended that the regulations should integrate specifically, by reference or intent, the ADA, Unruh, and the Disabled Persons Act, among other laws. She also suggested that the regulations take into consideration that, when automated-decision systems are used as part of an interview process, people may need extra assistance to use such systems, including those with low vision, blindness, and other disabilities.

Steven Perrotta, Director of SHRM, the Society of Human Resource Management:

Perrotta expressed his concern that the proposed regulations may chill the adoption of AI by businesses and HR professionals in California. He highlighted that AI can have many positive benefits for businesses, including improved efficiency, creativity, and work quality, and when used by HR professionals, may reduce potential bias and lead to more diverse hiring.

Prasanna G., Ambedkar King Study Circle member:

Prasanna G. expressed his concern that the proposed regulations did not include caste as a protected class, and urged the council that when considering definitions, to explicitly prohibit discrimination on the basis of caste. He urged the council to ensure that ADS and AI systems do not use criteria that identify caste, such as last names, which he stated are very important caste identifiers among those from South Asian backgrounds. He suggested requiring testing for ADS and AI systems using caste-identifying data, to ensure that they do not perpetuate bias.

Ajinkya Ashok, Ambedkar King Study Circle member:

Ashok noted that caste-based discrimination is widespread among South Asians in the U.S. He referred to a study that confirms caste-based discrimination in resume shortlisting. He urged CRD to test ADS and AI systems to help identify and eliminate caste-based bias.

Evelina Ayrapetyan, Center for AI and Digital Policy (CAIDP):

Ayrapetyan suggested that the regulations should include clear disclosure requirements where automated decisions are being used for employment decisions. Secondly, she suggested that the regulations explicitly require human oversight in final employment decisions. Lastly, she recommended that the Council refer to draft regulations issued by the California Privacy Protection Agency in December 2023 on automated decision making, which would allow employees and job seekers to opt out of automated decision-making systems.

Arul, Ambedkar King Study Circle member:

Arul expressed her concern regarding caste-based bias in employment decisions using ADS and AI systems. She raised concerns regarding existing biases that can be perpetuated by ADS and AI systems, due to data gaps regarding protected classes of people.

Assistant Chief Counsel Rachael Langston acknowledged the emailed and written public comments received.

Chair Garcia adjourned the public hearing portion of the meeting at 11:09 AM.

VIII. Subcommittee Updates

Chair David Garcia and Councilmembers

A. Discussion by the Council

Councilmember Wilensky provided an update on the Government Code section 11135 subcommittee. She stated the subcommittee is considering what materials would be useful in informing stakeholders about the new updates to the regulations.

Councilmember Hong gave an update on the Community Education and Outreach subcommittee. She stated the subcommittee has been meeting with the Commission on the State of Hate to discuss a joint meeting.

Councilmember Olude gave an update on the Reasonable Accommodations for Associational Disabilities and Employment Leaves subcommittee. She stated they are working on drafting regulations regarding reproductive loss and bereavement leave.

B. Public Comment

No public comment.

IX. Further Public Comment

No further public comment.

X. Adjournment

Chair Garcia adjourned the meeting at approximately 11:14 AM.

DATE: 9/6/2024

DAVID GARCIA
Chair

TAYLOR WHITNEY
CRD Outreach and Education Office Technician