CIVIL RIGHTS COUNCIL
Proposed Modifications to Employment Regulations Regarding Leave, Reasonable Accommodations, and Transfers for Pregnancy, Childbirth, or Related Medical Conditions; and Bonding Leave

INITITAL 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

The Fair Employment and Housing Act (FEHA) requires an employer to provide job-protected leaves, reasonable accommodations, and temporary transfers for an employee because of pregnancy, childbirth, or a related medical condition. (Gov. Code § 12945.) Similarly, the Federal Pregnant Workers Fairness Act (PWFA) (42 U.S.C. § 2000gg) makes it unlawful for a "covered entity to … not make reasonable accommodations[1] to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee." (42 U.S.C. § 2000gg-1(1).) The PWFA went into effect on June 27, 2023, and its implementing regulations (29 C.F.R Part 1636) went into effect on June 18, 2024. The implementing regulations of the PWFA include language more protective than the corresponding FEHA regulations implementing California's reasonable accommodation requirement for workers disabled by pregnancy, childbirth, or related medical conditions.

The principle that state law should be at least as protective as federal law is well settled with respect to a number of state and federal law counterparts. (See, e.g., *Cal. Fed. Sav. And Loan Ass'n v. Guerra* (1987) 479 U.S. 272, at p. 280 [affirming the decision of the 9th Circuit] ["Congress intended [the Pregnancy Discrimination Act of 1978] to be 'a floor beneath which pregnancy disability benefits may not drop."]; (*Calmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1926 [*citing* Stats.1992, Ch. 913, § 1, p. 4282] [recalling the Legislative intent "to strengthen California law where it is weaker" than the ADA, that is, in the non-FEHA statutes, "and to retain California law when it provides more protection for individuals with disabilities than" the ADA, that is, in the FEHA].) Accordingly, FEHA's implementing regulations should be at least as protective as those implementing the PWFA, where authorized by statute.

Additionally, the California Family Rights Act (CFRA) (Gov. Code § 12945.2), which is part of

[1] Although the PWFA does not include a leave entitlement for pregnancy, childbirth, or related medical conditions, its implementing regulations specify that both paid and unpaid leave are forms of reasonable accommodation under the act. (29 C.F.R. § 1632.3(i)(3).)

FEHA, entitles eligible employees to job-protected leaves of absence to bond with a child following its birth, adoption or foster placement; for the serious health condition of an employee's family member; and for an employee's own serious health condition. The current CFRA regulations require employees taking bonding leave to use the leave at least two weeks at a time, allowing for only two exceptions where the leave can be taken for a shorter duration. However, this requirement is not in the statute and creates inconsistency between leave for bonding with a new child and the other reasons for CFRA leave.

Pursuant to Government Code section 12935, subdivision (a), the Civil Rights Council (Council) of the Civil Rights Department (CRD) has authority to adopt necessary regulations regarding the FEHA. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code sections 12945 (Pregnancy Leave and Accommodations) and 12945.2 (CFRA). It is also intended to clarify the three entitlements (reasonable accommodations, temporary transfers, and job-protected leaves of absence) provided under section 12945 for individuals who are pregnant, have given birth, or have a related medical condition, as well as to clarify the requirements and obligations particular to each entitlement.

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

Article 6. Pregnancy, Childbirth, or Related Medical Conditions.
The purpose of this article is to provide clarity and guidance regarding an employer's obligation under FEHA to provide job-protected leaves of absence and reasonable accommodations to a worker affected by pregnancy, childbirth, or a related medical condition.

Global Changes
The Council proposes to make certain global changes throughout this article. First, the Council proposes to use gender-neutral language throughout the regulations, which is more inclusive. The use of this language is also necessary for consistency, as CRD's other regulations use gender-neutral terminology.

The Council also proposes to replace most references to "pregnancy" with the phrase "pregnancy, childbirth, or a related medical condition." Similarly, the Council proposes to replace references to "pregnancy or perceived pregnancy" with "actual or perceived pregnancy, childbirth, or a related medical condition." These changes are necessary for clarity and specificity.

The Council also proposes to make a number of non-substantial changes, including reorganization for the purpose of clarity.

§ 11035. Definitions.
The purpose of this section is to explain terms used throughout this article.

~~§ 11035(a). "Affected by pregnancy"~~
The Council proposes to strike this subsection and move it to new subsection 11035(m)(1) with amendments (see explanation of new subsection 11050(m)(1) below for clarification on proposed amendments.) This reorganization is necessary for clarity.

§ 11035~~(b), (d), (f), and (u).~~
The Council proposes to strike current subsections (b), (d), (f), and (u), defining the terms "because of pregnancy," "condition related to pregnancy, childbirth, or a related medical condition," "disabled by pregnancy," and "related medical condition," respectively. As discussed further below, these sections are no longer necessary, as they have been replaced by proposed new subsection (m), which defines "pregnancy, childbirth, or a related medical condition." These deletions are necessary for clarity and conciseness.

§ 11035~~(g). "Eligible female employee."~~
The Council proposes to strike the definition of "eligible female employee." This definition is no longer appropriate given the Council's proposal to use gender-neutral language throughout these regulations. This is necessary for clarity and consistency.

§ 11035(~~n~~i) "Health care provider."

§ 11035(~~n~~i)(1)
The Council proposes to supplement the list of health care providers in the existing language of this section with additional types of health care providers listed in the PWFA regulations (29 C.F.R. 1636.3(l)(3)). This amendment - broadening the non-exhaustive list of health care providers who may support an employee's need for pregnancy disability leave, a reasonable accommodation, or a transfer for pregnancy, childbirth, or a related medical condition - is necessary to ensure that the implementing regulations of FEHA are at least as protective as those implementing the federal PWFA. The additional types of health care providers the Council proposes to add include nurses, doulas, psychiatrists, other mental health professionals, industrial hygienists, lactation consultants, physical therapists, occupational therapists, and vocational rehabilitation specialists. The Council also includes in the list "any other person who meets the definition of 'health care provider' under FMLA and its implementing regulations or who meets the definition of 'health care provider' under the PWFA and its implementing regulations." This language is borrowed from the definition of "health care provider" in the CFRA regulations (2 CCR 11087(o)(2)), modified only to include the reference to PWFA. These definitions are necessary to ensure that the list is reflective of the many types of health care providers that may be involved in the treatment of a "pregnancy," "childbirth," or "related medical condition." The "any other person" language is necessary to ensure that the regulations implementing FEHA are at least as protective as those implementing the FMLA and PWFA.

The Council also proposes striking the following language which appears in both (i)(1)(A) and (B): "who directly treats or supervises the treatment of the applicant's or employee's pregnancy, childbirth, or a related medical condition, or 'a condition related to pregnancy, childbirth, or a related medical condition,' as set forth in Government Code section 12945." The language requiring a health care provider, for purposes of these regulations, to be the individual providing direct treatment or supervising direct treatment is not set forth in the statute; nor is it included the FMLA regulations. It also conflicts with language proposed to be added later in the regulations, which states: "An employer may not require that the health care provider providing medical certification be the same provider treating the condition at issue." This language is set forth in the PWFA regulations at 29 C.F.R. 1636.3(l)(3). Including it, and striking language contradictory to it, is necessary to ensure that the FEHA is at least as protective as federal law.

The Council also proposes to amend this subsection by relocating the list of types of health care providers in (i)(1)(B) before the reference to other persons "capable of providing health care services" identified by FMLA or its implementing regulations, as well as to add that "health care providers" include individuals who meet the definition of "'health care provider' under the PWFA or its implementing regulations." Focusing primarily on the robust, albeit non-exhaustive, list of types of health care providers, instead of including them only by reference to FMLA and PWFA, is necessary to ensure that this list of providers is not narrowed by future amendments to FMLA or PWFA.

§ 11035(j) "Interactive Process."
The Council proposes to add a definition for the term "interactive process" as follows:

> [A]n informal, good faith interactive process between the covered entity and the employee seeking an accommodation for pregnancy, childbirth, or a related medical condition. This process should identify the adjustment or change at work that is needed, if not clear from the request. There are no rigid steps that must be followed.

In drafting this definition, the Council reviewed and relied upon the definition of the same term in the PWFA regulations, at 29 C.F.R. 1636.3(k), but modified that definition to be more consistent with Government Code section 12945, which does not reference "known limitations." Defining this term is necessary because it is a term used throughout the regulations.

§ 11035(~~p~~l). "Medical certification"
In addition to non-substantial changes, the Council proposes to add "or to take pregnancy disability leave" at the end of the section, to clarify that medical certification may also be requested to support a request for pregnancy disability leave. This is necessary for clarity and consistency.

~~§ 11035(q) "Perceived pregnancy"~~

The Council proposes to strike this subsection and move it to new subsection 11035(m)(2) with amendments (see explanation of new subsection 11035(m)(2) below for clarification on proposed amendments.) This reorganization is necessary for clarity.

§ 11035(m). "Pregnancy, childbirth, or a related medical condition."

The Council proposes to add a definition for the term "pregnancy, childbirth, or a related medical condition." This definition is taken from the definition of the same term in the PWFA regulations (29 C.F.R. § 1636.3(b)), modified to include other medical conditions relocated from current subsections of the FEHA regulations which the Council has proposed to strike. These sections include §§ 11035(b), (d), (f), and (u), defining the terms "because of pregnancy," "condition related to pregnancy, childbirth, or a related medical condition," "disabled by pregnancy," and "related medical condition," respectively.

The subsection also clarifies what types of medical conditions may constitute conditions related to pregnancy, childbirth, or a related medical condition for purposes of Government Code section 12945. In addition to the conditions currently included in the existing regulations the Council proposes adding the following conditions: additional lactation-related medical conditions including low milk supply, engorgement, plugged ducts and fungal infections; antenatal (during pregnancy) anxiety, depression, or psychosis; post-partum anxiety or psychosis; ectopic pregnancy; preterm labor; pelvic prolapse; nerve injuries; cesarean or perineal wound infection; maternal cardiometabolic disease; HELLP (hemolysis, elevated liver enzymes and low platelets) syndrome; hyperemesis gravidarum; anemia; endometriosis; sciatica; lumbar lordosis; carpal tunnel syndrome; chronic migraines; dehydration; hemorrhoids; nausea or vomiting; edema of the legs, ankles, feet, or fingers; high blood pressure; infection; frequent urination; incontinence; loss of balance; vision changes; varicose veins; changes in hormone levels; vaginal bleeding; menstruation; and types of pregnancy loss, including via miscarriage, stillbirth, or abortion.

This list corresponds to the list of medical conditions in the implementing regulations for the PWFA, at 29 C.F.R. § 1636.3(b). This modification is necessary to provide more in-depth guidance regarding what types of conditions may result in the need for pregnancy disability leave, a reasonable accommodation, or a transfer under California law. Additionally, the proposed modified list includes conditions that are typical of most pregnancies (e.g., changes in hormone levels, nausea, vomiting, etc.). Including such conditions is important to clarify that workers are entitled to pregnancy disability leave and accommodations even where their conditions are typical of almost all pregnancies, not just those that are high-risk.

This definition is necessary to provide a clear and succinct definition for interrelated terms used throughout the regulations and to, by including a more comprehensive (though non-exhaustive) list of medical conditions, ensure the FEHA's implementing regulations are at least as protective as the regulations implementing the PWFA.

§ 11035(m)(1). "Affected by pregnancy, childbirth, or a related medical condition" or "disabled by pregnancy, childbirth, or a related medical condition."

The Council proposes relocating this definition, currently in subsection (a) (proposed to be stricken), to this subsection, and amending this definition such that the defined terms clearly include not only pregnancy, but also childbirth or a related medical condition. Also, the Council proposes to include the term "disabled by pregnancy, childbirth, or a related medical condition," as this term and the term "affected by" are often used interchangeably throughout the regulations.

§ 11035(m)(2) "Perceived pregnancy, childbirth, or a related medical condition."
The Council proposes relocating this definition, currently in subsection (q) (proposed to be stricken), to this subsection, and amending this definition to change "perceived pregnancy" to "perceived pregnancy, childbirth, or a related medical condition." This is necessary for clarity and to remain consistent with a change proposed throughout the regulations. For the same reason, the Council also proposes to change the current language "…treated by an employer or other covered entity as being pregnant or having a related medical condition" to "treated by an employer or other covered entity as being pregnant, having given birth, or having a related medical condition." Also, the Council proposes to include the terms "perceived to be affected by pregnancy, childbirth, or a related medical condition, and "perceived to be disabled by pregnancy, childbirth, or a related medical condition," as these terms and the term "perceived pregnancy" are often used interchangeably throughout the regulations.

§ 11035(m)(3)
The Council proposes relocating the sentence, "Nothing in this Article shall exclude a transgender individual who is affected or disabled by pregnancy, childbirth, or a related medical condition," currently in subsections (f) and (g) (proposed to be stricken), to this section. Each of these modifications are necessary for clarity.

§ 11035(o). "PWFA."
The Council proposes to add a definition for the acronym "PWFA," explaining that it "means the federal Pregnant Workers Fairness Act (42 U.S.C. §2000gg) and its implementing regulations (29 C.F.R. § 1636.1, et seq.)." This addition is necessary to define a term that is used throughout this Article.

§11035(p). "Qualified employee."
The Council proposes to add a definition for the term "qualified employee," defined as follows:

> (s) "Qualified employee" means either:
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> (1) an employee who, with or without reasonable accommodation, can perform the essential functions of their position, or if the accommodation is leave, who is reasonably expected to be able to perform the essential functions, with or without an accommodation, at the end of the leave; or
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> (2) an employee who is unable to perform one or more essential functions if the inability to perform the essential function(s) can be reasonably accommodated through,

for instance, the temporary suspension of the essential function(s) and the employee performing the remaining functions of the position, or the remaining functions plus other functions temporarily assigned by an employer; the employee performing the functions of a different job to which they are temporarily transferred; the employee participating in the employer's light or modified duty program; or other arrangements.

In drafting this definition, the Council relied on the definition of the same term in the regulations implementing the PWFA at 29 C.F.R. 1636.3(f), ensuring that FEHA's implementing regulations are no less protective. This definition is necessary because the term is used throughout the proposed regulations.

§ 11035(~~s~~q). "Reasonable Accommodation."

The Council proposes to modify and expand upon the definition of "reasonable accommodation" of an employee affected by pregnancy, childbirth, or a related medical condition to reflect the more expansive definition set forth in federal regulations implementing the PWFA. In particular, the PWFA regulations clarify that reasonable accommodations for an employee affected by pregnancy, childbirth, or a related medical condition include, but are not limited to, "making changes in the work environment or in the way a job is customarily done that is effective in enabling an employee to perform the essential functions of the job"; "temporarily suspending the performance of one or more essential functions"; "providing telework, remote work, or a change of work site"; and "making adjustments to allow an employee to work without increased pain or increased risk to the employee's health or the health of the pregnancy." The Council proposes to add these examples of reasonable accommodation (in addition to retaining the examples in the current regulations) as new subsections 11035(~~s~~q)(1), (2), (8), and (9), respectively. These amendments are necessary for clarity and to ensure that FEHA's implementing regulations are at least as protective as the regulations implementing the PWFA.

§ 11035(s). "Self-confirmation"

The Council proposes to add a definition for "self-confirmation," as "a simple statement where an employee confirms that they need, and that their health care provider has advised, a reasonable accommodation because of pregnancy, childbirth, or a related medical condition. A covered entity may not require that the statement be in a specific format, use specific words, or be on a specific form." This language is consistent with the definition of "self-confirmation" in the PWFA regulations. (29 C.F.R. 1636.3(l)(4).) This definition for a term is necessary because the term is used throughout the proposed regulations. This addition is also necessary to ensure that FEHA's proposed regulations are as least as protective as those implementing the PWFA. Currently, FEHA does not preclude the option of providing a self-confirmation in certain circumstances; however, the original implementing regulations did not include any such language when promulgated in 1995.

§ 11040. Reasonable Accommodations Due to Pregnancy, Childbirth, or a Related Medical Condition.

The purpose of this section is to provide guidance regarding an employer's obligations to

provide reasonable accommodations to an employee where needed because of pregnancy, childbirth, or a related medical condition. The Council proposes amending the title of this section to clarify that the accommodations discussed in this section are limited to accommodations *needed because of pregnancy, childbirth, or a related medical condition*, as set forth in Government Code section 12945. This is necessary for clarity.

§ 11040(a)(2)(A).
The Council proposes to strike "the employer's legally permissible past and current practices" from the list of factors that should be considered when determining whether an accommodation is reasonable. Accommodations are meant to be tailored to the individual requesting them; an accommodation cannot be characterized as unreasonable simply because an employer has never provided that particular accommodation before. The EEOC emphasized this in its interpretive guidance of the PWFA, stating: "Under the PWFA, as under the ADA, employers should conduct an individualized assessment in response to each request for a reasonable accommodation. (Equal Employment Opportunity Commission Implementation of the Pregnant Workers Fairness Act, 89 FR 29096-01 at 29125 (Apr. 19, 2024) [hereinafter "PWFA Implementation"].) Striking this language is necessary to make the regulation consistent with the statute and to ensure that FEHA's implementing regulations are at least as protective as those implementing the PWFA.

§ 11040(a)(2)(B).
The Council proposes adding to this section a reference to the proposed definition of "interactive process" in proposed new section 11035(j). This is necessary for clarity.

~~§ 11040(c).~~
The Council proposes to strike this subsection and move it to new subsection 11050(c)(2)(A) with amendments (see explanation of new subsection 11050(c)(2)(A) below for clarification on proposed amendments.) This reorganization is necessary for clarity.

§11040(c).
The Council proposes to create a new subsection (c) entitled "Requests and Responses to Requests for Reasonable Accommodations." The purpose of this section is to transfer, reorganize, and amend language from current section 11050 to specify that the language applies specifically to reasonable accommodations (and not pregnancy disability leave or transfer). This is necessary for clarity.

§11040(c)(1).
The Council proposes to add new subsection (c)(1) to state: "A request for accommodation because of pregnancy, childbirth, or a related medical condition, may be made at any time." This addition is consistent with federal guidance, in particular, the EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, which explains:

> An individual with a disability may request a reasonable accommodation at any time

> during the application process or during the period of employment. The ADA does not preclude an employee with a disability from requesting a reasonable accommodation because s/he did not ask for one when applying for a job or after receiving a job offer.

(Equal Employment Opportunity Commission. Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (2022) at q. 4.) Nothing in PWFA nor the FEHA is inconsistent with allowing an applicant or employee to request an accommodation at any time while they are disabled because of pregnancy, childbirth, or a related medical condition. This language is necessary for clarity, to provide guidance explaining that an employee is not required to request a reasonable accommodation at the start of their pregnancy or at any other particular point in time.

§ 11040(c)(2).

The Council proposes to add new subsection (c)(2) which will include an amended version of language currently in 11050(a)(5). Current section 11050(a)(5) reads as follows:

> Employer Response to Reasonable Accommodation, Transfer, or Pregnancy Disability Leave Request. The employer shall respond to the reasonable accommodation, transfer, or pregnancy disability leave request as soon as practicable, and, in any event no later than 10 calendar days after receiving the request. The employer shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

The Council proposes to clarify that the reasonable accommodation discussed in this subsection is "related to pregnancy, childbirth, or a related medical condition." The Council also proposes striking all existing text following "as soon as practicable." A 10-calendar-day gap between a request for accommodation and response may be excessive, especially where the accommodation requested is brief or the need is immediate. Further, it is nonsensical to deem approval of a reasonable accommodation request retroactive, given that the accommodation would necessarily begin only after it is approved. Both modifications are necessary for clarity.

The Council also proposes to remove from this existing language references to "transfer" or "pregnancy disability leave," as slightly different factors should be considered in determining whether there has been an unnecessary delay depending on whether transfer, an accommodation, or leave is being sought. (The language of current section 11050(a)(5) has also been tailored and added to section 11041 (transfer) and 11042 (pregnancy disability leave). This modification is necessary for clarity.

The Council also proposes to add language to this section clarifying that an unnecessary delay in granting a reasonable accommodation may constitute a violation of an employer's obligation under this section, even if the employer eventually provides the accommodation. The Council further proposes to explain what factors are considered to determine whether a delay is unreasonable.

The Council proposes to make the amendments discussed above such that language reads as follows:

> (2) Employer Response to Reasonable Accommodation Request. An employer shall respond to a reasonable accommodation request related to pregnancy, childbirth, or a related medical condition as soon as practicable. Unnecessary delay in the employer's response or provision of reasonable accommodation may be considered a violation of this section, even if the covered entity eventually provides the reasonable accommodation. In determining whether there has been an unnecessary delay, factors to be considered, with no one factor to be dispositive, include:
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> (A) The reason for the delay;
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> (B) The length of the delay;
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> (C) The length of time that the accommodation is needed. If the accommodation is needed for a short time, unnecessary delay in providing it may effectively mean failure to provide the accommodation;
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> (D) How much the employee and the covered entity each contributed to the delay;
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> (E) Whether the covered entity was engaged in actions related to the reasonable accommodation request during the delay;
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> (F) Whether the covered entity offered the employee an interim reasonable accommodation during the interactive process or while waiting for the covered entity's response. For the purposes of this factor, the interim reasonable accommodation should be one that allows the employee to continue working. Leave will not be considered an interim reasonable accommodation supporting this factor, unless the employee selects or requests leave as an interim reasonable accommodation.
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> (G) Whether the accommodation was or would be simple or complex to provide. Delay in providing the following accommodations, or other accommodations similarly common and easy to provide, will likely constitute unnecessary delay:
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> (i) Allowing an employee to carry or keep water near and drink, as needed;
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> (ii) Allowing an employee to take additional restroom breaks, as needed;
>
> (iii) Allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
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> (iv) Allowing an employee to take breaks to eat and drink, as needed.

The added language is analogous to the PWFA regulations at 29 C.F.R. §§ 1636.3(j)(4) and 1636.4(a)(1). This addition is necessary to ensure that FEHA regulations are at least as protective as those implementing the PWFA. It is also necessary to prevent employers from unnecessarily delaying the provision of an accommodation for short-term pregnancy- or childbirth-related conditions such that the accommodation is not available during the time it is needed.

§ 11040(c)(3).

The Council proposes adding the following language to new subsection (c)(3):

> An employee disabled by pregnancy, childbirth, or a related medical condition is not required to accept an accommodation. However, if such employee rejects a reasonable accommodation or, in the alternative, a transfer that is necessary to enable the employee to perform an essential function(s) of the position held or desired or to apply for the position, or rejects the temporary suspension of an essential function(s), and, as a result of that rejection, cannot perform an essential function(s) of the position, or cannot apply, the employee will not be considered "qualified" as defined in section 11035(p).

In developing this language, the Council relied upon the recent regulations implementing the PWFA at 29 C.F.R. § 1636.4(a)(2). This language acknowledges the broad protections available to employees who are disabled by pregnancy, childbirth, and related medical conditions but explains that if all possible accommodations (or, in the alternative, transfers) are rejected by an employee, they may not remain "qualified," which could jeopardize their job protection. This is necessary for clarity.

§ 11040(c)(3)(A).

The Council proposes adding the following language to new paragraph (c)(3)(A):

> (A) If an employee disabled by pregnancy, childbirth, or a related medical condition meets the definition of "qualified employee" under paragraph (p) of section 11035 of these regulations and needs one or more essential functions of the relevant position to be temporarily suspended, the covered entity must provide the accommodation if reasonable as described under paragraph (a)(2)(A) of this section.

In developing this language, the Council relied upon recent regulations implementing the PWFA at 29 C.F.R. § 1636.3(j)(3). This language clarifies that an employee disabled by pregnancy, childbirth, or a related medical condition may still be a qualified employee if one or more of their essential functions is temporarily suspended. The addition of this language is necessary because state law must be at least as protective as federal law, but in this instance, federal law provides greater protections by allowing a suspension of one or more essential functions while an employee is disabled by pregnancy, childbirth, or a related medical condition.

§ 11041. Transfer – All Employers.

The purpose of this section is to provide guidance regarding an employer's obligations to provide a transfer to an employee where needed because of pregnancy, childbirth, or a related medical condition.

~~§ 11041(a)(2)(C).~~

The Council proposes to strike this subsection, relating to medical certifications, and to move it with amendments to new section 11050(a)(1). (Any amendments to this language will be detailed in the explanation of that new section.) This is necessary for clarity and consistency, as it is part of the Council's efforts to reorganize the regulations to make clear which requirements and protections apply to which of the three entitlements (job-protected leave, reasonable accommodation, or temporary transfer), and how those entitlements differ from one another.

§ 11041(e).

The Council proposes adding new subsection (e), which would state that "[a] request for transfer because of pregnancy, childbirth, or a related medical condition, may be made at any time." This language is necessary for clarity, to provide guidance explaining that an employee is not required to request a transfer at the start of their pregnancy or any other particular point in time. This addition is consistent with federal guidance, in particular, the EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, which explains:

> An individual with a disability may request a reasonable accommodation at any time during the application process or during the period of employment. The ADA does not preclude an employee with a disability from requesting a reasonable accommodation because s/he did not ask for one when applying for a job or after receiving a job offer.

(Equal Employment Opportunity Commission, Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (2022) at q. 4.) Nothing in the FEHA nor the PWFA is inconsistent with allowing an applicant or employee to request an accommodation at any time while they are disabled because of pregnancy, childbirth, or a related medical condition. This language is necessary for clarity and to provide guidance explaining that an employee is not required to request a reasonable accommodation at the start of her pregnancy or any other particular point in time.

§ 11041(f). Employer Response to Transfer Request.

The Council proposes to add new subsection (f) which will consist of language amended and transferred from the language in current 11050(a)(5), which reads:

> Employer Response to Reasonable Accommodation, Transfer, or Pregnancy Disability Leave Request. The employer shall respond to the reasonable accommodation, transfer, or pregnancy disability leave request as soon as practicable, and, in any event no later than 10 calendar days after receiving the request. The employer shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

The Council proposes to clarify that the transfer discussed in this subsection is a transfer "related to pregnancy, childbirth, or a related medical condition." The Council also proposes striking all existing text following "as soon as practicable." A 10-calendar-day gap between a request for transfer and response may be excessive, especially where the transfer requested is brief or the need is immediate. Further, it is nonsensical to deem approval of a transfer request retroactive, given that the transfer would necessarily occur only after it is approved.

The Council also proposes to remove from this existing language references to "reasonable accommodation" or "pregnancy disability leave," as slightly different factors should be considered in determining whether there has been an unnecessary delay depending on whether transfer, an accommodation, or leave is being sought. (This language has also been tailored and added to section 11040 (reasonable accommodations) and 11042 (pregnancy disability leave).

The Council proposes to add language to this section clarifying that an unnecessary delay in granting a transfer constitutes a violation of an employer's obligation under this section, even if the employer eventually provides the transfer. The Council further proposes to explain what factors are considered to determine whether a delay is unreasonable.

The Council proposes to adopt the above-described changes such that the subsection reads as follows: add the following language at the end of the existing text of this subsection:

(f) Employer Response to Transfer Request.

(1) An employer shall respond to a request for transfer related to pregnancy, childbirth, or a related medical condition, as soon as practicable. Unnecessary delay in the employer's response or provision of transfer may constitute a violation of this section, even if the covered entity eventually provides the transfer. In determining whether there has been an unnecessary delay, factors to be considered, with no one factor to be dispositive, include:

(A) The reason for the delay;

(B) The length of the delay;

(C) The length of time that the transfer is needed. If the transfer is needed for a short time, unnecessary delay in providing it may effectively mean failure to provide the transfer;

(D) How much the employee and the covered entity each contributed to the delay;

(E) Whether the covered entity was engaged in actions related to the transfer request during the delay;

(F) Whether the covered entity offered the employee an interim reasonable accommodation while waiting for the covered entity's response to the transfer request. For the purposes of this factor, the interim reasonable accommodation should be one that allows the employee to continue working. Leave will not be considered an interim reasonable accommodation supporting this factor, unless the employee selects or requests leave as an interim reasonable accommodation.

This addition is necessary to ensure that the regulations implementing FEHA are at least as protective as those implementing the PWFA. The added language is analogous to the PWFA regulations at 29 C.F.R. §§ 1636.3(j)(4) and 1636.4(a)(1). It is also necessary to prevent employers from unnecessarily delaying the provision of a transfer for short-term pregnancy- or childbirth-related conditions such that the transfer is not available during the time it is needed.

§ 11041(g).
The Council proposes adding the following language to new subsection (g):

An employee disabled by pregnancy, childbirth, or a related medical condition is not required to accept a transfer. However, if such employee rejects a transfer (or, in the alternative, a reasonable accommodation) that is necessary to enable the employee to perform an essential function(s) of the position held or desired or to apply for the position, or rejects the temporary suspension of an essential function(s), and, as a result of that rejection, cannot perform an essential function(s) of the position, or cannot apply, the employee will not be considered "qualified," as defined in 11035(p).

In developing this language, the Council relied upon the recent regulations implementing the PWFA at 29 C.F.R. § 1636.4(a)(2). This language acknowledges the broad protections available to employees who are disabled by pregnancy, childbirth, and related medical conditions but explains that if all possible accommodations (or, in the alternative, transfers) are rejected by an employee, they may not remain "qualified," which could jeopardize their job protection. This addition is necessary for clarity.

§ 11042. Pregnancy Disability Leave.
This section explains the pregnancy disability leave entitlement, what it provides, how much is provided, and how it may be taken.

~~§ 11042(c).~~
The Council proposes to strike this subsection in its entirety and relocate it, with amendments, to proposed new section 11043(c). The proposed amendments will be set forth below in the explanation of section 11043(c).

§ 11043. Pregnancy Disability Leave Notice; Response to Requests.
The Council proposes to add new section 11043 in order to clarify both the notice required to take pregnancy disability leave and to emphasize that pregnancy disability leave is the only of

the three entitlements that requires advance notice. The section is also proposed to provide guidance on how employers should respond to a request for pregnancy disability leave. This guidance on responses to requests is available with regard to both reasonable accommodations (section 11040(c)) and transfers (11041(f)), so this addition is necessary for clarity and consistency in the context of leave.

§ 11043(a). Reasonable Advance Notice.

§ 11043(a)(1).
The Council proposes to include an amended version of language in the current section 11050(a), which reads as follows:

> Verbal or Written Notice. An employee shall provide timely oral or written notice sufficient to make the employer aware that the employee needs reasonable accommodation, transfer, or pregnancy disability leave, and, where practicable, the anticipated timing and duration of the reasonable accommodation, transfer or pregnancy disability leave.

The Council proposes to add "Reasonable" before "Verbal or Written Notice" and to replace "timely notice" notice with "reasonable timely notice." These amendments are necessary for consistency throughout the regulations and to ensure that the implementing regulations are no less protective than the statute.

The Council also proposes to strike "reasonable accommodation" and "transfer." This is necessary for clarity and accuracy, as the statute includes no advance notice requirement for either reasonable accommodation or transfer.

The Council proposes to add a sentence to the end of (a)(1) reading as follows: "The verbal or written notice need not be in a specific format, use specific words, or be on a specific form to be effective." This modification is consistent with requirements set forth by implementing regulations of the California Family Rights Act (CFRA), which state that an "employee need not expressly assert rights under CFRA or FMLA or even mention CFRA or FMLA to meet the notice requirement; however, the employee must state the reason the leave is needed, such as, for example, the expected birth of a child or for medical treatment." (2 CCR § 11091(a)(1).) This addition is also similar to language in the PWFA regulations at 29 C.F.R. 1636.3(d)(2) (explaining that communication to an employer "need not be in writing, be in a specific format, use specific words, or be on a specific form in order for it to be considered 'communicated to the employer.'") This addition is necessary to clarify what an employer is and is not permitted to require of an employee who requests leave. It is also necessary to ensure that the notice requirement in FEHA is not more onerous than that under federal law, which serves as a "floor" below which such rights may not sink. (*Cal. Fed. Sav. and Loan Ass'n v. Guerra* (1987) 479 U.S. 272, 285.)

§ 11043(a)(2).

The Council also proposes to add new paragraph (a)(2), stating:

> There is no specific length of notice required by this section. There is a rebuttable presumption that 30 days' notice or more constitutes "reasonable advance notice." However, a notice period of fewer than 30 days may also constitute "reasonable advance notice."

Although there is no minimum number of days by which advance notice must be provided prior to pregnancy disability leave, this language is necessary to provide a guidepost for employers and employees regarding a reasonable number of notice days. The existence of the rebuttable presumption does not require that 30 days of advance notice is provided, and it continues to allow for notice as soon as practicable in the event that it is not possible to provide advance notice.

§ 11043(a)(3).

The Council proposes to create this subsection using amended language that it proposes to strike from current section 11050(a)(3), which currently reads:

> When 30 Days Is Not Practicable. If 30 days advance notice is not practicable, because it is not known when reasonable accommodation, transfer, or leave will be required to begin, or because of a change in circumstances, a medical emergency, or other good cause, notice must be given as soon as practicable.

The Council proposes to modify the above language such that "reasonable" notice is required rather than "30 days" notice. This is necessary to ensure that FEHA's implementing regulations are consistent with and not less protective than the statute, which only requires "reasonable notice" of the leave. (Gov. Code § 12945(a).)

The Council also proposes to remove the references to transfers and reasonable accommodations, as the statute does not require advance notice for either.

§ 11043(b). Employer Response to Requests for Pregnancy Disability Leave.

The Council proposes to add new subsection (b)(1) which will consist of language amended and transferred from the language in current 11050(a)(5), which reads:

> Employer Response to Reasonable Accommodation, Transfer, or Pregnancy Disability Leave Request. The employer shall respond to the reasonable accommodation, transfer, or pregnancy disability leave request as soon as practicable, and, in any event no later than 10 calendar days after receiving the request. The employer shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

The Council proposes striking all existing text following "as soon as practicable." A 10-calendar-

day gap between a request for pregnancy disability leave and the response may be excessive, especially where the leave requested is brief or the need is immediate.

The Council also proposes to remove from this existing language references to "reasonable accommodation" or "transfer," as slightly different factors should be considered in determining whether there has been an unnecessary delay depending on whether transfer, an accommodation, or leave is being sought. (This language has also been tailored and added to section 11040 (reasonable accommodations) and 11041 (transfer).

The Council proposes to add language to this section clarifying that an unnecessary delay in granting pregnancy disability leave may constitute a violation of an employer's obligation under section 11042(a) of the regulations (requiring employers to provide pregnancy disability leave), even if the employer eventually provides the leave. The Council further proposes to explain what factors are considered to determine whether a delay is unreasonable, as follows:

> Unnecessary delay in the employer's response or provision of pregnancy disability leave may constitute a violation of section 11042(a), even if the covered entity eventually provides the leave. In determining whether there has been an unnecessary delay, factors to be considered, with no one factor to be dispositive, include:
>
> (A) The reason for the delay;
>
> (B) The length of the delay;
>
> (C) The length of time that the leave is needed. If the leave is needed for a short time, unnecessary delay in providing it may effectively mean failure to provide the leave;
>
> (D) How much the employee and the covered entity each contributed to the delay;
>
> (E) Whether the covered entity was engaged in actions related to the leave request during the delay

This addition is necessary to ensure that FEHA is at least as protective as federal law. The added language is analogous to the PWFA regulations at 29 C.F.R. §§ 1636.3(j)(4) and 1636.4(a)(1). It is also necessary to prevent employers from unnecessarily delaying their response to a pregnancy disability leave request such that the leave is not available during the time it is needed.

§ 11043(c).

The Council proposes to strike, amend, and relocate current section 11042(c) to proposed new section 11043(c).

In addition to making non-substantive changes to the text, the Council also proposes clarifying that an employer is prohibited from denying leave where the employee has provided reasonable advance notice or notice as soon as practicable. This is necessary for consistency

and to ensure that these regulations do not add requirements that are not reflected in the statute.

The Council also proposes modifying subsection (c)(2) such that it explains that medical certification is required, if the employer has requested it, and adding that the certification must note that the employee requires pregnancy disability leave from work. The subsection also references section 11050 of the proposed regulations where more information on medical certifications is available. This is necessary for clarity.

The Council also proposes striking current section 11050(a)(4) and transferring amended language from that subsection to new subsection 11043(c)(3). The current language of section 11050(a)(4) reads:

> Prohibition against Denial of Reasonable Accommodation, Transfer, or Leave in Emergency or Unforeseeable Circumstances. An employer shall not deny reasonable accommodation, transfer, or pregnancy disability leave, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide adequate advance notice of the need for the reasonable accommodation, transfer, or leave.

This proposed language would clarify that denials of leave are not only prohibited during an emergency or unforeseeable situation, but also where the employee has both provided notice (advance or as soon as practicable) and their health care provider has advised that the leave is needed for pregnancy, childbirth, or a related medical condition. This is necessary to ensure that the regulations are not more restrictive than the statute.

The new language, in full, would read as follows (with amendments to the current text of section 11042(c) underlined for ease of reference):

> (c) Denial of Leave is an Unlawful Employment Practice.
>
> (1) It is an unlawful employment practice for an employer to refuse to grant pregnancy disability leave to an employee disabled by pregnancy~~.~~ where the employee has:
>
> (~~1~~A) ~~who has~~ provided the employer with reasonable advance notice or notice as soon as practicable regarding the ~~medical~~ need for the pregnancy disability leave; and
>
> (~~2~~B) provided or had their ~~whose~~ health care provider provide, upon the employer's request, medical certification, as defined in paragraph (l) of section 11035, advising~~ed~~ that the employee is disabled by pregnancy and requires pregnancy disability leave from work. ~~The employer may require medical certification of the medical advisability of the leave, as set forth in sections 11049(a) and (b), and 11050(b).~~ (Additional details of the purpose and contents of medical certifications, as well as guidance regarding when employers may request them, can be found in proposed new section 11050 of these

regulations).

(2) An employer shall not deny pregnancy disability leave, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide reasonable advance notice of the need for the leave.

§ 11047~~6~~. Relationship between CFRA and Pregnancy Leaves.
This section provides guidance on two types of job-protected leaves, how they interact with one another, and how each leave can be used while pregnant or after pregnancy.

§ 11047~~6~~(d). Maximum Entitlement.
The Council proposes adding the following language to the end of this subsection: "Notwithstanding this subsection, an employee may be eligible for additional leave pursuant to other state and federal laws, including the Pregnant Workers Fairness Act and other provisions of FEHA." This addition is necessary to reflect current law, including new federal law that was not in place the last time these regulations were amended (the PWFA).

§ 11047~~6~~(e) and (f).
The Council proposes adding examples explaining the overlap between PDL and CFRA leave. This is necessary for clarity because many laypersons find the interaction of the two laws, including when each may be used, confusing. Many employers are not as familiar with the intersection of these laws as they are with many other topics.

The first of the two examples demonstrates that pregnancy disability leave and CFRA leave do not overlap but are separate and distinct entitlements.

The second example clarifies that an employer may allow the use of CFRA leave (typically used for bonding) when an employee exhausts their pregnancy disability leave but remains disabled due to pregnancy, childbirth, or a related medical condition.

These examples are necessary for clarity.

§ 11048~~7~~. Relationship between Pregnancy Disability Leave and Leave of Absence as Reasonable Accommodation for Physical or Mental Disability – Separate and Distinct Rights.
This section provides guidance on two types of job protections – in particular, pregnancy disability leave and FEHA's disability protections, including reasonable accommodations (see Gov. Code § 12926(p)).

The Council proposes the addition of an example to this section in new subsection (b), demonstrating when and how an employee who has exhausted all leave under their pregnancy disability leave and CFRA entitlements may be entitled to additional leave as a reasonable accommodation under the PWFA, or as a reasonable accommodation under the disability provisions of FEHA. This addition is necessary to clarify the potential interaction between PDL, CFRA, disability provisions of the FEHA, and the federal Pregnant Workers Fairness Act which is

often not obvious to either employees or employers.

§ 11049. Employer Notice to Employees of Rights and Obligations for Reasonable Accommodation, to Transfer, and to Take Pregnancy Disability Leave.
This section explains the notice an employer is required to provide to its employees about their rights and obligations related to pregnancy disability leave, transfer, and reasonable accommodation.

§ 11049(b)(2).
The Council proposes to replace "adequate advance notice" with "reasonable advance notice." This is necessary for consistency. The Council also proposes striking "reasonable accommodation" and "transfer" from this subsection because neither of those entitlements has a notice requirement – that is exclusive to pregnancy disability leave. This change is necessary for consistency and clarity. It is also necessary to ensure that the regulations are not less protective than the statute.

~~**§ 11050. Employee Requests for Reasonable Accommodation, Transfer, or Pregnancy Disability Leave.**~~

The purpose of this section is to provide guidance regarding employee and employer rights and obligations related to reasonable accommodations, transfers, and leaves due to pregnancy, childbirth, or a related medical condition. The section includes discussion of notice requirements, medical certification requirements, and more.

The Council proposes to strike section 11050 in its entirety, with the exception of subsection 11050(e). The section combines three separate entitlements in one section and, in so doing, sets forth notice requirements and other provisions that are not required in statute for all three entitlements. The Council further proposes to relocate some of the language stricken from current section 11050 to other sections in the modified regulations (primarily to proposed new sections 11043 and 11050). The amendments to language that is proposed to be relocated from current section 11050 to other sections will be set forth in the explanations for the respective new sections.

The Council proposes to strike other language without reinstating it, for reasons explained below.

~~**§ 11050(a). Adequate Advance Notice.**~~
The Council proposes to strike this subsection in its entirety and replace it with new language in new section 11050(a). The amendments to this language are explained in that section.

~~**§ 11050(a)(1).**~~
The Council proposes to strike subsection (a)(1) and relocate an amended version of the language to new section 11043(a)(1). The amendments to this language will be detailed in the explanation of that new section.

~~§ 11050(a)(2). 30 Days Advance Notice.~~

The Council proposes to strike subsection 11050(a)(2), which requires an employee to provide 30 days advance notice if their need for leave, accommodation, or reasonable accommodation is foreseeable, in full. As mentioned above, accommodations and transfers requested because of pregnancy, childbirth, and related medical conditions do not require advance notice. Further, the 30-day requirement to provide notice where requesting pregnancy disability leave is less protective than the protections in the statute, which include no set deadline for providing notice. Finally, the requirement that the employee "make a reasonable effort to schedule" medical appointments "to minimize disruption to the employer's operations" exists nowhere in statute and suggests the existence of a sort of "undue hardship" defense to a denial or delay of pregnancy disability leave that is not provided for in statute. This is also less protective than statute. Striking this language is necessary to ensure that the regulations are no less protective than state statute and federal law.

~~§ 11050(a)(3).~~

The Council proposes to strike subsection (a)(3) and relocate an amended version of the language to new section 11043(c)(2). The amendments to this language will be detailed in the explanation of that new section.

~~§ 11050(a)(4).~~

The Council proposes to strike subsection (a)(4) in its entirety and relocate an amended version of the language to new section 11043(b)(2). The amendments to this language will be detailed in the explanation of that new section.

~~§ 11050(a)(5).~~

The Council proposes to strike subsection (a)(5) in its entirety and relocate amended, tailored versions of the language to new sections 11040(c)(2), 11041(f), and 11043(b)(1). The amendments to this language will be detailed in the explanations of those new sections.

~~§ 11050(a)(6). Consequences for Employee Who Fairs to Give Employer Adequate Advance Notice of Need for Reasonable Accommodation or Transfer.~~

The Council proposes striking this subsection in full, given that there is no statutory requirement for this notice. This is necessary for clarity and accuracy.

It appears the original Commission that promulgated this regulation relied on FMLA regulations which provide strict notice requirements for leave. However, FMLA only provides for leave; neither the FMLA nor the FEHA statutes require advance notice when requesting a reasonable accommodation or transfer.

~~§ 11050(a)(7). Direct notice.~~

The Council proposes striking this subsection in full. It explains as follows: "Direct notice to the employer from the employee rather than from a third party regarding the employee's need for

reasonable accommodation, transfer, or pregnancy disability leave is preferred, but not required." Again, there is no advance notice requirement for reasonable accommodations or transfers in statute. Further, the purpose and necessity of this regulation is unclear. Third parties, such as family members and friends, frequently provide notice in situations where the employee is incapable of directly notifying their employer of their need for leave due to severe illness, hospitalization, or other issues. Striking this section is necessary to be consistent with state statute and ensure that these regulations are as least as protective as corresponding federal regulations.

~~11050(b)(1)~~.
The Council proposes to relocate a portion of the first sentence of this section ("An employer must notify the employee of the medical certification requirement each time a certification is required") to new section 11050(a)(2)(A). This relocation is non-substantial.

The Council also proposes to strike, amend, and transfer the following sentence in current subsection (b)(1) to new subsection 11050(e): "An employer may use the form provided at section 11050(e), or may develop its own form." It will also be present in new subsection 11050(e) with amendments. (See new subsection 11050(e) for an explanation of amendments.)

The Council also proposes to strike the following language in current subsection (b)(1) and not reinstate it in another section:

> Notice to the employee of the need for medical certification may be oral if the employee is already out on pregnancy disability leave because the need for the leave was unforeseeable. The employer shall thereafter mail or send via electronic mail or by facsimile a copy of the medical certification form to the employee or to her health care provider, whomever the employee designates.

This language assumes that the employer may require a specific format or form for medical certification, whereas these proposed regulations allow for medical certification using the department's template at section 11050(e) or the health care provider's documentation. Further, the purpose of providing oral notice of the employer's need for a medical certificate is unclear; presumably the employee or their health care provider is able to receive the communication by fax, email, or regular mail.

~~§ 11050(b)(2), (3).~~
The Council proposes to strike subsections (b)(2) and (3) in their entirety and not relocate them. These subsections set forth deadlines by which a medical certification supporting a request for pregnancy disability leave, reasonable accommodation, or transfer must be provided. However, these deadlines are not based in statute and add confusion to the regulations. The new regulations would clarify that there is a "<u>possibility that the response to requests for pregnancy disability leave, reasonable accommodation, and/or transfer may be delayed if the employee fails to timely provide medical certification.</u>" (See proposed new section 11050(a)(2).) This potential consequence of failing to provide a timely medical certification makes hard deadlines

unnecessary. Removing this section is necessary for clarity and to ensure that FEHA is at least as protective as federal law.

The Commission who first promulgated these regulations relied to some extent upon regulations interpreting the FMLA, which also provided some of the timelines in the current pregnancy regulations. However, while FEHA should be at least as protective as FMLA, FEHA can be more protective than its federal counterpart. FEHA does not mandate strict deadlines for providing notice when requesting pregnancy disability leave. (See 29 USC 2651(b): "Nothing in this Act [the FMLA] or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act."

~~§11050(b)(4).~~
The Council proposes striking current section (b)(4) and transferring the following portion of its language to new section 11050(a)(3): "The employer shall advise the employee whenever the employer finds a medical certification inadequate or incomplete and provide the employee a reasonable opportunity to cure any deficiency." This is a non-substantial change.

The Council also proposes striking the remainder of the language in current subsection 11050(b)(4): "At the time the employer requests medical certification, the employer shall also advise the employee of the anticipated consequences of an employee's failure to provide adequate medical certification." This language is made redundant by the Council's proposal to add clearer language than the vague reference to "consequences." This language is proposed to be set forth in proposed new section 11050(a)(2): "<u>An employer must notify the employee of … the possibility that the response to requests for pregnancy disability leave, reasonable accommodation, and/or transfer may be delayed if the employee fails to timely provide medical certification.</u>" Striking similar and less clear language from current 11050(b)(4) is necessary for clarity.

~~§ 11050(b)(5).~~
The Council proposes to strike subsection (b)(5) in its entirety and not relocate it. This section adds some confusion and ambiguity, leaving the employer and/or employee to determine whether the employer's medical certification requirements are "less stringent" than those set forth in these regulations. Also, the proposed regulations specify that an employer may, but is not required to, request certification; the only caveat is that if an employer does request certification, it may not seek information beyond what is included on the template form in new section 11050(e). The regulations do not prohibit an employer from requesting less information than that included on the template form. This amendment is necessary for clarity and conciseness.

~~§ 11050(b)(6), (7).~~
The Council proposes to strike subsection (b)(6) and relocate amended versions of the language therein to new sections 11050(b) and (d).

The Council also proposes to strike subsection (b)(7) and relocated an amended version of the language to new section 11050(d).

These amendments are necessary for clarity. The amendments to this language will be detailed in the explanation of each of the new sections referenced above.

~~§ 11050(b)(8).~~
The Council proposes to strike current section 11050(b)(8) and to move the following language to new section 11050(a)(2)(B):

> If the certification satisfies the requirements of this section, the employer must accept it as sufficient. The employer may not ask the employee to provide additional information beyond that allowed by these regulations.

The Council also proposes to strike the remainder of current section 11050(b)(8) and relocate the following language to new subsection 11050(a)(4):

> Upon expiration of the time period that the health care provider originally estimated the employee would need reasonable accommodation, transfer, or pregnancy disability leave, the employer may require the employee to obtain recertification if additional time is requested.

These proposed changes are non-substantial.

~~§ 11050(b)(9)~~
The Council proposes to strike current section 11050(b)(9) and transfer its language to new section 11050(a)(6): "The employer is responsible for complying with all applicable law regarding the confidentiality of any medical information received." This proposed change is non-substantial.

~~§ 11050(c)(1) and (2).~~
The Council proposes to strike subsections (c)(1) and (2) in their entirety and not relocate them. These subsections set forth deadlines by which a medical certification supporting a request for pregnancy disability leave, reasonable accommodation, or transfer must be provided. However, these deadlines are not based in statute and add confusion to the regulations. The new regulations would clarify that there is a "possibility that the response to requests for pregnancy disability leave, reasonable accommodation, and/or transfer may be delayed if the employee fails to timely provide medical certification." (See proposed new section 11050(a)(2).) This potential consequence of failing to provide a timely medical certification makes hard deadlines unnecessary. This proposed modification is necessary for clarity and to ensure that FEHA is at least as protective as federal law.

~~§ 11050(d). Release to Return to Work.~~
The Council proposes to strike current section 11050(d) and transfer its language to new

section 11050(a)(7), with amendments. The amendments to this language will be detailed in the explanation of new subsection 11050(a)(7).

§ 11050. Medical Certification for Reasonable Accommodation, Transfer, or Pregnancy Leave.
The Council proposes to create a new section 11050, in place of section 11050 of the current regulations.

This purpose of this section is to provide guidance regarding when medical certification may be requested by an employer, what information should be included in the certification, and how the certification requirements for pregnancy disability leave, reasonable accommodation, and transfer vary from one another.

§ 11050(a)(1).
The Council proposes creating this new subsection for the purpose of relocating a portion of the language it proposes to strike from current section 11050(b). The current version of this language states: "As a condition of granting reasonable accommodation, transfer, or pregnancy disability leave, the employer may require written medical certification. The employer must notify the employee of the need to provide medical certification…"

The Council proposes to make the following amendments to the above language and transfer it to new section 11050(a)(1). The Council proposes clarifying that an "employer may, but is not required to," require a certification. This language is necessary to accurately reflect the statute and ensure that FEHA is at least as protective as its federal counterparts.

The Council further proposes to add the following underlined language to this subsection:

> …require written medical certification confirming the medical advisability of an employee's need for reasonable accommodation, transfer, or pregnancy disability leave because they are affected by pregnancy, childbirth, or a related medical condition. An employer may request written medical certification only when it is reasonable under the circumstances, as set forth in this section.

This is necessary to clarify the circumstances under which a medical certification may be requested, and that an employer may only request such a certification where doing so is reasonable.

The Council proposes the above language after seeking guidance from the PWFA regulations; in particular, 29 C.F.R. 1636.3(l)(1) and (l)(2)(i) (stating that the employer may request medical documentation only where reasonable to confirm that the employee is affected by pregnancy and needs a related accommodation).

This proposed modification is necessary to ensure that the FEHA and its implementing regulations are at least as protective as federal law.

§ 11050(a)(2).
The Council proposes creating this new subsection for the purpose of amending and relocating a portion of the language it proposes to strike from current section 11050(b)(1), which states:

> The employer must notify the employee of the need to provide medical certification; the deadline for providing certification; what constitutes sufficient medical certification; and the consequences for failing to provide medical certification.

The Council proposes striking from the above language "the consequences for failing to provide medical certification" and replacing it with the following language: "and the possibility that granting requests for pregnancy disability leave, reasonable accommodation, and/or transfer may be delayed if the employee fails to provide timely medical certification." This is necessary to clarify the potential consequences rather than refer to them vaguely.

§ 11050(a)(2)(A).
The Council proposes transferring the following language from the beginning of current section 11050(b)(1) to proposed new section 11050(a)(2)(A): "An employer must notify the employee of the medical certification requirement each time a certification is required." The relocation of this sentence is a non-substantial change.

§ 11050(a)(2)(B).
The Council proposes relocating the following language from current section 11050(b)(8) with a few non-substantial amendments for clarity, as follows:

> If the certification satisfies the requirements of this section ~~11050(b)~~, the employer must accept it as sufficient. The employer may not ask the employee to provide additional information beyond that allowed by these regulations. (new 11050(a)(2)(B))

This is a non-substantial change.

§ 11050(a)(3).
The Council proposes creating this new subsection for the purpose of relocating a portion of the language from current section 11050(b)(4) that reads as follows:

> The employer shall advise the employee whenever the employer finds a medical certification inadequate or incomplete and provide the employee a reasonable opportunity to cure any deficiency.

This is a non-substantial change.

§ 11050(a)(4).
The Council proposes relocating the following language from current section 11050(b)(8):

> Upon expiration of the time period that the health care provider originally estimated the

> employee would need reasonable accommodation, transfer, or leave, the employer may require the employee to obtain recertification if additional time is requested.

This is a non-substantial change.

§ 11050(a)(5).

The Council proposes to add language set forth in the PWFA implementing regulations, stating, "An employer may not require that the health care provider providing medical certification be the same provider treating the condition at issue." (29 C.F.R. 1636.3(l)(3).) Still, the health care provider, regardless of whether they are the treating provider, must include in their documentation confirmation that an employee has a condition related to pregnancy, childbirth, or a related medical condition as well as confirmation that an accommodation, transfer, or leave is needed due to the limitation. (29 C.F.R. § Pt. 1636, App. A at para. 144.) The ability to seek documentation from a variety of doctors ensures that an employee is not burdened in situations where they do not have or cannot see their regular provider or specialist. This amendment is necessary to ensure that the FEHA is not less protective than federal law.

§ 11050(a)(6).

The Council proposes relocating the following language from current section 11050(b)(9): "The employer is responsible for complying with all applicable law regarding the confidentiality of any medical information received." This is a non-substantial change.

§ 11050(a)(7).

The Council proposes relocating language, with one modification, from current section 11050(d), which reads:

> Release to Return to Work. As a condition of an employee's return from pregnancy disability leave or transfer, the employer may require the employee to obtain a release to return-to-work from her health care provider stating that she is able to resume her original job or duties only if the employer has a uniformly applied practice or policy of requiring such releases from other similarly situated employees returning to work after a non-pregnancy related disability leave or transfer.

The Council proposes amending the above language by adding "to resume their original job or duties with or without reasonable accommodations." This change is necessary to clarify that an employer may not have a "100% policy," under which it allows workers to return from pregnancy disability leave or transfer only if and when they have no medical conditions or disabilities that would require a reasonable accommodation to perform the essential functions of their job.

§ 11050(a)(8).

The Council proposes to add new subsection (a)(8) with the following language:

> For an employer to require medical certification where not reasonable, or to require

additional information where sufficient information and/or documentation has been provided, may constitute prohibited retaliation and interference under this section.

When drafting this language, the Council found guidance within the implementing regulations of the PWFA. As is explained in the Appendix to part 1636, "if a covered entity has sufficient information from the employee to determine whether they have a PWFA limitation and need an adjustment or change at work due to the limitation, requiring the employee to provide additional information could be a violation of the PWFA's anti-retaliation provision (42 U.S.C. 2000gg-2(f)) (§ 1636.5(f))." (29 C.F.R. § Pt. 1636, App. A at para. 110.) Accordingly, this change is necessary to ensure that FEHA is at least as protective as federal law.

§ 11050(b). Medical Certification Requirements Specific to Pregnancy Disability Leave Requests.

The Council proposes relocating language, with non-substantial amendments, from current section 11050(b)(7) to new section 11050(b), as follows:

(1) The medical certification indicating that an employee needs pregnancy disability leave because they are disabled by pregnancy, childbirth, or a related medical condition ~~disability necessitating a leave~~ is sufficient if it contains:

(A) A statement that the employee needs to take pregnancy disability leave because they are disabled by pregnancy, childbirth or a related medical condition;

(B) The date on which the employee became disabled because of pregnancy, childbirth, or a related medical condition, and the estimated duration of the leave.

This is a non-substantial change.

§ 11050(c). Medical Certification Requirements Specific to Requests for Reasonable Accommodations.

The Council proposes relocating language, with amendments, from current section 11050(b)(6) to new section 11050(c), with some modifications:

(1) The medical certification indicating the medical advisability of reasonable accommodation ~~or transfer~~ related to pregnancy, childbirth, or a related medical condition is sufficient if it contains:

(A) A description of the requested reasonable accommodation ~~or transfer~~;

(B) A statement ~~describing~~ confirming the medical advisability of the reasonable accommodation ~~or transfer~~ because of pregnancy, childbirth, or a related medical condition; and

(C) The date on which the need for reasonable accommodation ~~or transfer~~ became or

will become medically advisable and the estimated duration of the reasonable accommodation ~~or transfer~~.

The Council proposes to strike "or transfer" from this language to clarify that these particular requirements apply only to reasonable accommodations related to pregnancy, childbirth, or a related medical condition. The Council also proposes to modify this language to replace the word "describing" with "confirming." This is necessary to clarify what is required within a medical certification supporting a worker's need for a reasonable accommodation due to pregnancy, childbirth, or a related medical condition. The phrase "describing the medical advisability of the reasonable accommodation" is vague regarding what information should be included in the description. Because whether an accommodation is medically advisable can be answered simply in the affirmative or negative, a confirmation of such advisability is sufficient, especially because the certification already requires "[a] description of the reasonable accommodation" that the health care provider is recommending (see proposed new section 11050(c)(1)(A)). This modification is necessary for clarity regarding how a health care provider must complete a medical certification.

§ 11050(c)(2).

The Council proposes to add new section 11050(c)(2) to the regulations, which states that:

> (A) An employer may, but need not, require a medical certification substantiating the employee's need for reasonable accommodation only when it is reasonable under the circumstances to determine whether the employee needs a reasonable accommodation due to pregnancy, childbirth, or a related medical condition.

The Council also proposes to add paragraph (c)(2)(B), which provides a illustrative list of circumstances in which it is not reasonable for an employer to seek medical certification to substantiate an employee's need for an accommodation because of pregnancy, childbirth, or a related medical condition. These examples include, but are not limited to, the following:

> (i) when the need for the reasonable accommodation is obvious;
>
> (ii) when the employer already has sufficient information to substantiate the employee's limitation and need for reasonable accommodation;
>
> (iii) when the employee requests one of the accommodations set forth in [new] section 11040(c)(2)(G)(i)-(iv); for these particular accommodations, an employer may only ask for a self-confirmation from the requesting employee;
>
> (iv) when the request for reasonable accommodation is related to a time/and or place to pump at work or nurse at work, if the child is in close proximity of the workplace; or
>
> (v) when the requested accommodations are available to other employees, who do not have a condition related to pregnancy or childbirth, and those employees are not required to provide medical certification.

In drafting this language, the Council relied upon the PWFA implementing regulations at 29 C.F.R. 1636.3(l). This addition is necessary for clarity and to ensure that FEHA is at least as protective as federal law.

§ 11050(c)(3).
The Council proposes to add new section 11050(c)(3), stating as follows:

> Withholding reasonable accommodation based on an employee's failure to provide information in a medical certification beyond what is described in this section shall be considered a failure to provide reasonable accommodation.

When drafting this language, the Council found guidance within the implementing regulations of the PWFA, specifically, 29 C.F.R. 1636.3(l)(2), which includes similar language. The inclusion of this language is necessary to ensure that FEHA is no less protective than federal law.

§ 11050(c)(4).
The Council proposes to add new section 11050(c)(4), stating as follows:

> If the request for supporting documentation was not reasonable under the circumstances for the covered entity to determine whether to grant the reasonable accommodation, a covered entity cannot defend the denial of a reasonable accommodation based on the lack of documentation provided by the employee.

The added language is consistent with the PWFA regulations at 29 C.F.R. § 1636.4(a)(3). This addition is necessary to ensure that FEHA is at least as protective as federal law.

§ 11050(d). Medical Certification Requirements Specific to Transfer Requests.
The Council proposes relocating language from current section 11050(b)(6), with some proposed modifications:

> (1) The medical certification indicating the medical advisability of ~~reasonable accommodation or~~ a transfer because of pregnancy, childbirth, or a related medical condition is sufficient if it contains:
>
> (A) A description of the requested ~~reasonable accommodation or~~ transfer;
>
> (B) A statement ~~describing~~ confirming the medical advisability of the ~~reasonable accommodation or~~ transfer because of pregnancy, childbirth, or a related medical condition; and
>
> (C) The date on which the need for ~~reasonable accommodation or~~ transfer became or will become medically advisable and the estimated duration of the ~~reasonable accommodation or~~ transfer.

The Council proposes to strike "reasonable accommodation" from this language to clarify that these particular requirements apply only to transfers related to pregnancy, childbirth, or a related medical condition. The Council also proposes to modify this language to replace the word "describing" with "confirming." This is necessary to clarify what is required within a medical certification supporting a worker's need for a transfer due to pregnancy, childbirth, or a related medical condition. The phrase "describing the medical advisability of the transfer" is vague regarding what information should be included in the description. Because whether a transfer is medically advisable can be answered simply in the affirmative or negative, a confirmation of such advisability is sufficient. This proposed modification is necessary for clarity regarding how a health care provider must complete a medical certification.

§ 11050(d)(2).

The Council proposes to add new section 11050(d)(2) to the regulations, which states that:

> An employer may, but need not, require a medical certification substantiating the employee's need for a transfer only when it is reasonable under the circumstances to determine whether the employee needs a transfer due to pregnancy, childbirth, or a related medical condition.

In drafting this language, the Council relied upon the PWFA implementing regulations at 29 C.F.R. 1636.3(l). This addition is necessary for clarity and to ensure that FEHA is at least as protective as federal law.

§ 11050(d)(3).

The Council proposes to add new section 11050(d)(3), stating as follows:

> Withholding a transfer based on an employee's failure to provide information in a medical certification beyond what is described in this section shall be considered a failure to provide transfer.

When drafting this language, the Council found guidance within the implementing regulations of the PWFA, specifically, 29 C.F.R. 1636.3(l)(2), which includes similar language. The inclusion of this language is necessary to ensure that FEHA is no less protective than federal law.

§ 11050(d)(4).

The Council proposes to add new section 11050(d)(4), stating as follows:

> If the request for supporting documentation was not reasonable under the circumstances for the covered entity to determine whether to grant a transfer, a covered entity cannot defend the denial of the transfer based on the lack of documentation provided by the employee.

The added language is consistent with the PWFA regulations at 29 CFR § 1636.4(a)(3). This addition is necessary to ensure that FEHA is at least as protective as federal law.

§ 11050(e). Medical Certification Form.
The Council proposes to amend 11050(e) by adding language clarifying that regardless of whether the medical certification form is developed by an employer or by the employee's health care provider, neither certification form may "request[] information beyond what is requested in the template form" set forth in this subsection. The employer also has the option of using the template form. This clarification is necessary for clarity and to ensure that employers are not able to circumvent the limitations to the medical information they may seek by developing their own certification form and including questions beyond what is permitted by these regulations. (The Council has recommended no substantial changes to the template form itself.)

§ 11051. Employer Notice.
This section sets forth the notice that employers must use, or the information employers must include in an equivalent notice.

The Council proposes to amend the template notice language as follows:

- Where "pregnancy" is referenced, also add references to "childbirth or a related medical condition," as the Council has proposed throughout these regulations;

- Reorganize section such that employee obligations related to notice and medical certification are made concise and clearly set forth immediately after the list of employer obligations;

- Add bullet point to clarify that not only may pregnancy disability leave be used for a variety of conditions (e.g., morning sickness, preeclampsia, post-partum depression, etc.) but that it also may used for various "types" of leave (e.g., more frequent breaks, time for prenatal or postnatal appointments, bed-rest, etc.).

- Clarify that advance notice requirements apply to pregnancy disability leave only;

- Replace language requiring "30 days' advance notice" prior to taking pregnancy disability leave with language requiring "reasonable advance notice";

- Strike the language "Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy," and replace with, "If you fail to provide timely notice of your need for pregnancy disability leave, the delayed notice may delay the response to your request for leave."

- Strike the following language, since advance notice is only required for pregnancy disability leave, which is sufficiently covered in the template notice:

- Give your employer reasonable notice: To receive reasonable accommodation, obtain a transfer, or take PDL, you must give your employer sufficient notice for your employer to make appropriate plans. Sufficient notice means 30 days advance notice if the need for the reasonable accommodation, transfer, or PDL is foreseeable, otherwise as soon as practicable if the need is an emergency or unforeseeable.

- Strike language regarding adherence to an employer's timeline for providing medical certification and employers' obligation to provide at least 15 days for the certification to be provided. Instead, clarify that if an employer requires medical certification confirming an employee's need for pregnancy disability leave, a reasonable accommodation, or a transfer, that certification must be provided "as soon as is practicable."

- Strike the following language:

  PLEASE NOTE that if you fail to give your employer reasonable advance notice or, if your employer requires it, written medical certification of your medical need, your employer may be justified in delaying your reasonable accommodation, transfer, or PDL.

- And replace it with the following language:

  <u>If you fail to provide timely medical certification confirming of your need for pregnancy disability leave, a reasonable accommodation, or a transfer, the response to your request may be delayed.</u>

- Update the notice regarding rights under the California Family Rights Act by clarifying the expanded definition of family and adding that this leave may be taken for a qualifying military exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent.

Collectively, these modifications are necessary for clarity and consistency with the other proposed modifications to the regulations.

§§ 11035, 11040, 11041, <u>11043</u>, 11048, <u>11050</u>, and 11051.
In addition to the changes detailed *supra*, the Council proposes to add reference to the Pregnant Workers Fairness Act (PWFA) 42 U.S.C. 2000gg and PWFA regulations, 29 C.F.R. § 1636, to the notes of sections 11035, 11040, 11041, <u>11043</u>, <u>11050</u>, and 11051.

Article 11. California Family Rights Act.
The purpose of this Article is to explain the obligations and restrictions set forth by the California Family Rights Act (CFRA) relating to job-protected leave to bond with a new child; for

placement of a child in an employee's family for adoption or foster care; for the serious health condition of an employee's child, parent, grandparent, grandchild, sibling, spouse, or designated person; for an employee's own serious health condition; and for a military exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent.

§ 11087. Definitions.
The purpose of this section is to explain terms used throughout this article.

§ 11087(t). "PWFA."
The Council proposes to add a definition for the acronym "PWFA," explaining that it "means the federal Pregnant Workers Fairness Act (42 U.S.C. §2000gg) and its implementing regulations (29 C.F.R. § 1636.1, et seq.)." This addition is necessary to define a term that is used throughout this Article.

§ 11090. Computation of Time Periods: Twelve Workweeks; Minimum Duration.
This purpose of this section is to provide guidance regarding the duration of family medical leave under the CFRA, including information regarding whether and how the leave may be taken intermittently.

§ 11090(d).
The Council proposes to strike the last two sentences in this subsection, which read: "The basic minimum duration of the leave shall be two weeks. However, an employer shall grant a request for a CFRA leave of less than two weeks' duration on any two occasions and may grant requests for additional occasions of leave lasting less than two weeks." This proposed modification is necessary to harmonize the regulations with the statute they are implementing, ensuring that the regulations do not narrow or purport to make less protective the entitlements set forth in the statute.

The requirement that the minimum duration of the leave is to be two weeks, except for two occasions which can last for a shorter duration, does not appear in the statute (Gov. Code § 12945.2). Conversely, the statute states, "Leave provided for pursuant to this section may be taken in one or more periods" (Gov. Code § 12945.2(o)). Striking the last two sentences of section 11090(d) will bring the regulations in accord with the statute.

This change is also necessary because regulations implementing the FEHA must be at least as protective as those implementing the Family Medical Leave Act (FMLA) (the federal counterpart to CFRA), and the "two-week rule" on bonding leave does not exist in the FMLA statute or its implementing regulations. (See 29 USC 2601 et seq.; 29 C.F.R. Part 825.)

§ 11093. Relationship between CFRA Leave and Pregnancy Disability Leave; ~~Relationship Between~~ CFRA Leave and Non-Pregnancy Related Disability Leave; and CFRA Leave and Leave as a Reasonable Accommodation under the federal PWFA.
The current purpose of this section is to describe the ways in which CFRA leave may used

following Pregnancy Disability Leave or Non-Pregnancy Related Disability Leave. The Council has proposed to broaden this section to also explain how these three leave types may interact with the leave under the federal Pregnant Workers Fairness Act.

§ 11093(a). Separate and Distinct Entitlements.
The Council proposes to amend this section to clarify that the right to CFRA leave is separate and distinct from the right to take leave as under the PWFA or as a reasonable accommodation for a disability. This is necessary for clarity because it explains how various entitlements are distinct from one another.

§ 11093(c). CFRA Leave, <u>Leave as a PWFA Reasonable Accommodation, and Leave as a Reasonable Accommodation for a non-pregnancy-related disability</u> after Pregnancy Leave.

§ 11093(c)<u>(3).</u>
The Council proposes renumbering this subsection and adding new paragraph (c)(3), describing the additional leave that may be provided as a reasonable accommodation under PWFA and/or the disability provisions of FEHA (Gov. Code § 12940) following the exhaustion of pregnancy disability leave (and of CFRA leave, if available). The new paragraph further explains that the ability to take leave as a reasonable accommodation under PWFA or the disability provisions of FEHA exists regardless of whether an employee has qualified for, exhausted, or been denied the use of their CFRA leave while still disabled by pregnancy. The language of this new paragraph is proposed as follows:

> <u>Where an employee remains disabled by pregnancy after using four months of pregnancy disability leave and, if available, their 12 weeks of CFRA leave, they may request leave as a reasonable accommodation under the PWFA or as a reasonable accommodation under the disability provisions of FEHA set forth in Government Code section 12940 (assuming their condition qualifies as a "disability" as defined in Government Code sections 12926(j) and (m)). The employer may be required to grant a reasonable accommodation of extended leave under PWFA or section 12940 regardless of whether the employee qualifies for CFRA leave, has exhausted their CFRA leave, or has been denied the ability to use their CFRA leave while still disabled by pregnancy.</u>

These changes are necessary for clarity as well as to explain the interrelatedness of and additional entitlements created by between a relatively new federal law (PWFA), and how that law may interact with CFRA and Pregnancy Disability Leave.

§ 11093(e). Disability Leave.

This section is necessary to clarify that the right to take CFRA leave is separate and distinct from the right to take pregnancy disability leave.

The Council proposes to clarify that the disability referenced in (e)(1)(A) is pregnancy disability leave. The council further adds new paragraph (e)(1)(B) to clarify that the right to take CFRA is

separate and distinct from the right to leave as a reasonable accommodation under the federal PWFA. This is necessary for clarity and to explain the impact of new federal legislation on state leave entitlements.

§ 11095. Notice of CFRA Rights and Obligations.
The purpose of this section is to provide guidance to employers on the information they are required to include in their notice to employees regarding family and medical leave as well as the posting and required translation of the notice.

§ 11095(a). Separate and Distinct Entitlements.
The Council proposes to modify this subsection so that it also explains that leaves as a reasonable accommodation under the PWFA or the disability provisions of FEHA are both also separate and distinct entitlements from the right to take CFRA leave.

§11095(d).
The Council proposes to amend subsection (d) by striking language stating that "the basic minimum duration of the leave [for the birth, adoption, or foster care placement of a child] is two weeks." This is necessary to maintain consistency with the proposed modification to section 11090(d) and to harmonize the regulations with the statute they are implementing, ensuring that the entitlements implemented by the regulations are not narrower or less protective than the entitlements set forth in the statute.

The Council also proposes to clarify that the reasonable advance notice required for pregnancy-related leaves is not required to be "at least 30 days.'"

The Council further proposes to add reference to leave "because of a qualifying military exigency" to the reasons an employee may take family care and medical leave. This is necessary to be consistent with statute.

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:

- Equal Employment Opportunity Commission. Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (2022).

- Equal Employment Opportunity Commission. Implementation of the Pregnant Workers Fairness Act, 89 FR 29096-01 at 29125 (Apr. 19, 2024).

REASONABLE ALTERNATIVES TO THE REGULATION AND THESE 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 employees and 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