FAIR EMPLOYMENT AND HOUSING COUNCIL PROPOSED AMENDMENTS TO CALIFORNIA FAMILY RIGHTS ACT REGULATIONS

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS
Title 2. Administration
Div. 4.1. Department of Fair Employment & Housing
Chapter 5. Fair Employment & Housing Council
Subchapter 2. Discrimination in Employment
Article 11. Family Care and Medical Leave Act

The Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.) contains the California Family Rights Act (CFRA) (Gov. Code, § 12945.2). CFRA ensures work leave rights for the birth of a child for purposes of bonding; 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, or spouse; and for an employee's own serious health condition.

Pursuant to Government Code section 12935, subdivision (a), the Fair Employment and Housing Council (Council) has authority to adopt necessary regulations regarding the FEHA. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code section 12945.2 (CFRA).

The specific purpose of each revision or proposed regulation and the reasons that the revision or proposed regulation is necessary are described herein. The problem that a particular revision or proposed regulation addresses and the intended benefits are outlined under each subdivision as applicable, when the proposed change goes beyond mere clarification. Many changes are not explained below as they are non-substantive, either in terms of correcting grammatical or stylistic mistakes, renumbering and/or relettering, or simply clarifying complicated concepts in simpler terms.

Article 11
The Council proposes to change the title of the article from FAMILY CARE AND MEDICAL LEAVE to CALIFORNIA FAMILY RIGHTS ACT to better identify its contents and remain consistent with the title of the statute the regulations interpret and supplement. This change is necessary to avoid the implication that the regulations implement the federal Family Care and Medical Leave Act (FMLA), rather than CFRA. This is not a substantive change.

§ 11087, Definitions
In the preamble, the Council proposes to update the citation to the FMLA regulations to give the most recent, pertinent guidance to readers. This amendment is necessary to ensure that the CFRA regulations use the most recently issued federal regulations as a point of reference, and not create confusion by referring readers to regulations issued in 1993. The Council also proposes to change “subchapter” to “article” to conform to revisions in the regulations’ hierarchy made when the Council’s changes without regulatory effect were published in October 2013. The general purpose

of the entire definitions section is to give meaning to technical terms defined throughout CFRA and its regulations, and to provide guidance when there is no other applicable section of the regulations.

§ 11087, subd. (a) "Adult Dependent Child"
The Council proposes to create a new subdivision for the definition of an adult dependent child because the definition is currently contained within the definition of "child," which the Council proposes to delete as it duplicates statutory language. This new definition is necessary because it would maintain the definition of a term that cannot be found in the statute and can reasonably be misconstrued. This definition would effectuate and elaborate on the definition of "child" set forth in Government Code section 12926, which is applicable to all sections of the FEHA, without merely repeating the definition.

§ 11087, subd. ~~(a)~~(b) "Certification"
No proposed change, but for reordering.

§ 11087, subd. ~~(a)~~(b)(1) Criteria to be Included in Certification for Leaves Other than for One's Own Serious Health Condition
The Council proposes to delete the list of criteria the certification must contain and to instead cross-reference the criteria listed in Government Code section 12945.2. This amendment is necessary to avoid duplicating statutory language and for ease of reference.

§ 11087, subd. ~~(a)~~(b)(1)~~1)~~(A) "Warrants the Participation of the Employee"
The Council proposes to cross-reference Government Code section 12945.2 and keep examples of actions that qualify as "[w]arrant[ing] the participation of the employee" so as to give meaning to that term as it is used in CFRA. This change is necessary for clarity and is not substantive.

§ 11087, subd. ~~(a)~~(b)(2) Criteria to be Included in Certification for Leaves for One's Own Serious Health Condition
The Council proposes to: (1) delete the list of criteria that the certification must contain and to cross-reference that information in Government Code section 12945.2, for ease of reference and to avoid duplicating statutory language; (2) add a cross-reference to section 11098 of these regulations, which provides a sample certification form; and (3) clarify "unable to perform the function of his or her position" by modifying "function" with "essential" so as to conform to the disability provisions of the FEHA. These amendments are necessary for clarity, consistency, to avoid duplicating statutory language and for ease of reference.

§ 11087, subd. ~~(b)~~(c) "CFRA"
No proposed change, but for reordering and one citation format.

~~§ 11087, subd. (c) "Child"~~
The Council proposes to delete the definition of child because it is duplicative of Government Code section 12945.2, subdivision (c)(1). The Council also proposes to move "in loco parentis" to its own subdivision so as to make the necessary definition easier to locate. This amendment is necessary to avoid duplicating statutory language and for ease of reference.

§ 11087, subd. (d) "Covered Employer"
The Council proposes: (1) adding "successors in interest" to the definition of covered employer so as to ensure that an employer may not use a company name change or buy-out to evade liability,

which conforms to the FMLA regulations at 29 CFR § 825.104 and 29 CFR § 825.107; (2) removing "within any State of the United States, the District of Columbia or any Territory or possession of the United States" so as to eliminate confusion and redundancy; (3) eliminating that the State of California is considered an employer and that employees need not work at the same location, which duplicates statutory language; and (4) adding the maximum distance between employees (75 miles) so as to clarify employers' responsibilities and emphasize this component of the "eligible employee" definition, since the definitions read in tandem. These amendments are necessary for clarity and to conform the CRFA regulation to the federal regulation, with which California employers subject to CFRA must also comply.

§ 11087, subd. (d)(1) "Directly Employs"
In addition to slight grammatical changes, the Council proposes to add a clarification derived from 29 CFR § 825.105(c), which provides that certain employees who are on different types of leave are counted as employees for the purpose of establishing who is a covered employer. This amendment is necessary to clarify an issue about which the existing regulation is silent, and to conform to federal law, with which California employers subject to CFRA must also comply.

§ 11087, subd. (d)(2) "Perform Services for a Wage or Salary"
The Council proposes to strike a specific citation to the Labor Code, so as to avoid confusion in the event the cited section is renumbered by future statutory amendment. This change is not substantive.

§ 11087, subd. <u>(d)(3)</u> Joint Employers and Integrated Employers
The Council proposes to add this entire subdivision, which would provide guidance when multiple corporations or subsidiaries can be considered an employer, so as to conform to 29 CFR § 825.105(c). After consideration, the Council determined cross-referencing the FMLA's expansive rules to be the best option, compared to the alternatives of restating them or crafting entirely new tests. This amendment is necessary for clarity and to conform to the federal regulation, with which California employers subject to CFRA must also comply, because the existing regulation is silent on this point and fails to take into account the complexity of current business associations.

§ 11087, subd. (e) "Eligible Employee"
In addition to grammatical changes and rephrasing for clarity, the Council proposes to use the Labor Code and Industrial Welfare Commission Wage Orders, rather than the federal Fair Labor Standards Act, to define the term "actually worked." This amendment is necessary to maintain consistency throughout the regulations and because CFRA claims are typically litigated in State court.

§ 11087, subd. (e)<u>(2)</u> Employment Periods Prior to a Break in Service of Seven Years
The Council proposes to add this entire subdivision so as to conform to 29 CFR § 825.110(b) interpreting the FMLA. The amendment would relieve employers of the burden of keeping records of employment prior to a continuous break in service of more than seven years, and would provide guidance on an issue about which the existing regulation is silent. The amendment is necessary for clarity and to conform the CRFA regulation to the federal regulation, with which California employers subject to CFRA must also comply.

§ 11087, subd. (e)(~~2~~)<u>(3)</u> Relationship with Pregnancy Disability Leave
The Council proposes to make minor grammatical changes and to clarify the type of leave

referenced, preferring to use the more general "pregnancy disability leave," rather than "FMLA leave based on her pregnancy," because the latter is too limiting and potentially confusing since California provides a separate leave entitlement for pregnancy (pregnancy disability leave). This change is necessary for clarity and is not substantive.

§ 11087, subd. (e)(~~3~~)(4) 50 Employees within 75 Miles of a Worksite; Worksite Definition
The Council proposes to define "worksite." The existing regulation does not define the term, which may be subject to different meanings. This amendment would effectuate Government Code sections 12945.2, subdivision (b), and 12945.2, subdivision (r), and is modeled on 29 CFR § 825.111(a). This change is necessary for clarity and to conform the CRFA regulation to the federal regulation, with which California employers subject to CFRA must also comply.

§ 11087, subd. (e)(~~3~~)(4)(A) No Denying or Cutting Short Leave for an Already-qualifying Event
No proposed change, but for reordering.

§ 11087, subd. (e)(5) Earning CFRA Eligibility during another Leave
The Council proposes to add this subdivision so as to conform to 29 CFR § 825.110(b) implementing the FMLA. This subdivision is necessary to clarify a potentially complex issue that the existing regulation only implies, but does not explicitly state—that leave time to which an employee is entitled counts as length of service for CFRA purposes. This amendment serves to expressly protect employees whose service exceeds 12 months, but whose actual time worked is less, and would conform the CRFA regulation to the federal regulation, with which California employers subject to CFRA must also comply.

§ 11087, subd. (h) "Family Care Leave"
No proposed change, but for one grammatical correction.

§ 11087, subd. (i) "FMLA"
No proposed change, but for citation formatting and updating the issuance date of the FMLA regulations.

§ 11087, subd. (j) "Health Care Provider"
The Council proposes to make one grammatical correction and to delete text duplicative of Government Code section 12945.2, subdivision (c)(6)(A), replacing it with a citation to Government Code section 12945.2. This amendment is necessary to avoid duplicating statutory language and for ease of reference.

§ 11087, subd. (k) "In Loco Parentis"
The Council proposes to give this technical legal definition its own subdivision, since in the existing regulation it is contained in the definition of "child," which the Council proposes to delete because it mostly duplicates statutory language. Including the definition of in loco parentis is necessary for clarity, because "parent" alone does not adequately express all parental relationships covered by CFRA leave.

§ 11087, subd. (*l*) "Key Employee"
The Council proposes to add this definition for clarity and ease of reference. While the existing CFRA regulations cover the defense related to this term in depth, one would need to cross-reference section 11089, subdivision (d)(2) to find it. This definition would make the regulations

more user-friendly without making a substantive change.

§ 11087, subd. ~~(k)~~(m) "Medical Leave"
No proposed change, but for reordering and citation formatting.

§ 11087, subd. ~~(l)~~(n) "Parent"
The Council proposes to delete the definition of parent because it is duplicative of Government Code section 12945.2, subdivision (c)(7), and proposes to instead cross-reference Government Code section 12945.2. The Council proposes to retain only the language not contained in the statute—that a parent, for purposes of CFRA, does not include a parent-in-law—providing guidance on an issue about which the Government Code is silent, and without which one could reasonably conclude the opposite. These changes are necessary to avoid duplicating statutory language and for clarity.

§ 11087, subd. ~~(m)~~(o) "Pregnancy Disability Leave"
No proposed change, but for reordering and one grammatical correction.

§ 11087, subd. (p) "Reason of the Birth of a Child"
The Council proposes to add this definition for clarity and ease of reference. While the regulations frequently use this term, many practitioners use and prefer the colloquial "baby bonding." It was thus deemed necessary to clarify that "reason of the birth of a child" is a formal version of the informal "baby bonding" or "bonding with a child after birth."

§ 11087, subd. ~~(n)~~(q) "Reinstatement"
The current definition of reinstatement refers readers to the FMLA regulation for its definition of restoration. With the Council's proposed amendment, the meaning of "reinstatement" would additionally be described as "the return of an employee to his or her original or comparable position after taking a CFRA leave." This amendment is necessary because federal law provides return rights to the "same or equivalent job" rather than to the "original or comparable position," which CFRA provides.

§ 11087, subd. ~~(o)~~(r) "Serious Health Condition"
In addition to grammatical changes, the Council proposes to clarify that on-the-job injuries are not the only injuries that constitute a serious health condition, eliminating the potentially incorrect inference that CFRA does not cover non-industrial injuries. The Council also proposes to demonstrate a nexus between "serious health condition" and the two terms that immediately follow it as sub-definitions—inpatient care and continuing treatment—by stating that a serious health condition must involve one or the other. The Council further proposes to add explicitly that the treatment of substance abuse qualifies as inpatient care or continuing treatment, making clear that substance abuse and its attending conditions are on par with other conditions that merit medical attention and qualify for CFRA leave. These amendments are necessary for clarity.

§ 11087, subd. ~~(o)~~(r)(1) "Inpatient Care"
The Council proposes to: (1) delete the requirement that inpatient care be overnight, since this is not necessarily true; (2) expand the definition to include "any subsequent treatment in connection with such inpatient care, or any period of incapacity," conforming to 29 CFR § 825.114; and define incapacity in accordance with 29 CFR § 825.113(b). These amendments are necessary for accuracy, clarity, and to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply.

§ 11087, subd. ~~(o)~~(r)(2) "Continuing Treatment"
The Council proposes to change "continuing" to "ongoing medical treatment" so as to avoid the redundancy of using "continuing" to define "continuing treatment." The Council also proposes minor changes including citation formatting and definition styling (e.g., adding the word "means" after "[c]ontinuing treatment"). These changes are necessary for clarity and are not substantive.

§ 11087, subd. ~~(p)~~(s) "Spouse"
The Council proposes to add registered domestic partners and same-sex married couples to the definition of "spouse." This amendment is necessary to comply with a current district court injunction requiring the removal of any distinction between opposite- and same-sex couples from California's legal definition of marriage and to ensure basic fairness and equality in the application of CFRA protections.

In 2008, the California Supreme Court held that limiting the official designation of "marriage" to opposite-sex couples violated the California Constitution's Equal Protection Clause in *In re Marriage Cases* (2008) 43 Cal.4th 757, 765. As a result, the term "between a man and a woman" was struck from Family Code section 300, which defines "marriage." (*Ibid*.) Later that year, California voters approved Proposition 8, also known as the "California Marriage Protection Act," which added Section 7.5 to the California Constitution to define marriage as between a man and a woman, thus halting same-sex marriages in California. This proposition was challenged and found to be unconstitutional as violating California's equal protection clause. (*Perry v. Schwarzenegger* (N.D.Cal. 2010) 704 F.Supp.2d 921, 1003.) The District Court enjoined all State officials from enforcing the constitutional provision enacted by Proposition 8. (*Id* at p. 1004.) Subsequently, Attorney General Kamala Harris wrote a letter to Governor Edmund G. Brown, Jr., verifying that this holding extended to all counties in the state and thus mandated that same-sex couples be granted equal recognition as opposite-sex couples under the law. (Attorney General Kamala Harris' letter to Governor Edmund G. Brown, Jr., June 3, 2013.)

Subsequently, as a result of the Supreme Court's finding that the proponents of California's Proposition 8 lacked standing in *Hollingsworth v. Perry* (2012) 570 U.S. ___ [133 S.Ct. 2652, 2668, 186 L.Ed.2d 768], the holding and injunction issued by the district court stand, and the law has effectively been returned to its status following *In re Marriage Cases*.

§ 11087, subd. ~~(q)~~(t) "Twelve Workweeks"
No proposed change, but for correcting the citation.

§ 11088, Right to CFRA Leave; Denial of Leave; Reasonable Request; Permissible Limitation
The purpose of section 11088 is to implement the protections CFRA provides by broadly indicating the rules and conditions of leave elaborated upon in subsequent sections.

§ 11088, subd. (b)(2) Reasonable Request
No proposed change, but for an updated citation.

§ 11088, subd. (c) Limitation on Entitlement
The proposed change is not substantive, but rather a partial restatement of the existing complicated rule in more straightforward terms. The Council also proposes to add an example to demonstrate how the rule works in practice for further clarification.

§ 11089, Right to Reinstatement: Guarantee of Reinstatement; Refusal to Reinstate; Permissible Defenses
The purpose of section 11089 is to implement reinstatement rights under CFRA.

§ 11089, subd. (a) Guarantee of Reinstatement
The proposed change is not substantive, but rather a partial restatement of a complicated rule in more straightforward terms for clarity.

§ 11089, subd. (a)(1) Reinstatement in Case of Replacement or Restructuring
The Council proposes to add this subdivision, derived mostly from 29 CFR § 825.214 to emphasize that the guarantee of reinstatement is not altered if the employer replaces the employee or restructures her/his position to accommodate the employee's absence. The proposed change would not alter existing law, but rather clarify a point on which the current regulation is silent and conform it to the federal regulation, with which California employers subject to CFRA must also comply.

§ 11089, subd. (a)(2) Reasonable Opportunity to Re-Qualify on Return
The Council proposes to add this subdivision, derived mostly from 29 CFR § 825.215(b) to emphasize that the guarantee of reinstatement is not altered if the employee lapses on a job requirement while on CFRA leave. Amended as proposed, the regulation would ensure that the employer and employee are treated fairly, by giving the employee a reasonable opportunity to comply. The proposed change would not alter existing law, but rather clarify a point on which the current regulation is silent and conform it to the federal regulation, with which California employers subject to CFRA must also comply.

§ 11089, subd. (b) Rights upon Return
The Council proposes to adopt this subdivision from 29 CFR § 825.215(a) to emphasize that the employee's position should be as close as possible to his/her former position, if not identical, upon return. This clarification is necessary to ensure that employers would not assign employees new, undesirable or unreasonable positions upon return, in an effort to penalize employees for taking leave and/or to deter leave taking. The proposed change would not alter existing law, but rather clarify a point on which the current regulations are not explicit and conform them to the federal regulations, with which California employers subject to CFRA must also comply.

§ 11089, subd. (b)(1) Scope of Equivalent Benefits
The Council proposes to adopt this subdivision from 29 CFR § 825.215(d)(1) to clarify what is meant by "equivalent benefits" in the subdivision immediately preceding it. The amendment is necessary because the term "equivalent benefits" does not necessarily speak for itself, leaving the questions—"equivalent to what?" and "what if benefits change during the leave?"—unanswered by the existing regulation. The proposed change would not alter existing law, but rather clarify a point on which the current regulations are not as explicit and conform them to the federal regulations, with which California employers subject to CFRA must also comply.

§ 11089, subd. (b)(2) No Prohibition on Accommodating Request for Schedule or Shift Change
The Council proposes to adopt this subdivision from 29 CFR § 825.215(e)(4) to clarify that: (1) even though an employer is obligated to reinstate an employee to the same, or a comparable, position, CFRA does not prohibit an employer and employee from agreeing to a different

arrangement; and (2) compliance with CFRA does not excuse an employer from complying with the disability provisions of the FEHA. The proposed changes are necessary because an overly literal reading of the existing regulation arguably could indicate that the right to reinstatement precludes other agreed upon arrangements, an outcome that would harm the employee and be contrary to the purpose of CFRA. The proposed changes would not alter existing law, but rather clarify points on which the current regulation is silent and conform it to the federal regulation, with which California employers subject to CFRA must also comply.

§11089, subd. ~~(b)~~(c) Refusal to Reinstate
No proposed change, but for reordering.

§ 11089, subd. ~~(b)~~(c)(1) Definite Date of Reinstatement
No proposed change, but for reordering.

§ 11089, subd. ~~(b)~~(c)(2) Change in Date of Reinstatement
The Council proposes to delete an unnecessary reference to 29 CFR § 825.311(c). The FMLA regulation, addressing an employee's intent to return, states, "the employer may require that the employee provide the employer reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable." The Council proposes to directly prescribe two days without reference to the FMLA regulation. The proposed amendment would make the two schemes similar; however, maintaining the FMLA reference would create confusion, since the FMLA regulation is worded differently. The proposed change is necessary for clarity and would not alter existing law.

§ 11089, subd. ~~(c)~~(d) Permissible Defenses
No proposed change, but for reordering and capitalizing "Defenses" in the title.

§ 11089, subd. ~~(c)~~(d)(1) Employment Would Have Ceased or Hours Would Have Been Reduced
The Council proposes to: (1) expand the title to include "or Hours Would Have Been Reduced" to reflect the addition of section 11089, subdivision (d)(1)(B); replace "at the time reinstatement is requested" with "on the date of the requested reinstatement" so as to avoid overly literal interpretations of the exact "time" of the requested reinstatement; and (3) reiterate section 11089, subdivision (a)(1), to emphasize that replacement or restructuring do not constitute a situation in which employment would have ceased. The proposed changes are necessary for clarity and are not substantive.

§ 11089, subd. ~~(c)~~(d)(1)(A) Employee Laid Off
No proposed change, but for reordering.

§ 11089, subd. ~~(c)~~(d)(1)(B) Shift or Overtime Eliminated
The Council proposes to add this subdivision verbatim from 29 CFR § 825.216(a)(2), to underscore that while there is a duty to reinstate, employers need not recreate shifts and/or hours that have been eliminated. This clarification, which explicitly states what is currently only inferable from the preceding sections, is necessary to avoid unjustly enriching an employee returning from CFRA leave and to conform the State regulation to federal regulation, with which California employers subject to CFRA must also comply.

§ 11089, subd. ~~(c)~~(d)(2) Provisions Applicable to "Key Employee"

The Council proposes to: (1) add a cross-reference to the definition of key employee to clarify and contextualize this defense; and (2) make minor stylistic revisions, like changing "shows" to "establishes" to use more precise and less confusing terminology. The proposed changes are necessary for clarity and are not substantive.

§ 11089, subd. ~~(c)~~(d)(2)(A) Requirement that Employee be Salaried

The Council proposes to add a definition of a salaried employee, which it would define as "an employee paid on a salary basis." While the proposed definition may be redundant and arguably self-evident, leaving the term undefined would create a needlessly complicated interpretation, instead of the clear guidance for best practices. The proposed amendment is thus necessary for clarity.

§ 11089, subd. ~~(c)~~(d)(2)(B) Requirement that Employee be among Highest Paid Ten Percent of Employees

The Council proposes to adopt the FMLA's method for calculating who is "among the highest paid 10 percent" from 29 CFR § 825.217(c). Rather than use language identical to that of the federal regulation, the Council proposes to alter it for clarity and to incorporate California law in calculating year-to-date wages. This amendment is necessary to prevent the use of needlessly complicated and/or inconsistent methods for calculating who is among the highest paid 10 percent of employees. The proposed amendment would not alter existing law, but rather clarify a point on which the current regulation is silent and conform it to the federal regulation, with which California employers subject to CFRA must also comply.

§ 11089, subd. ~~(c)~~(d)(2)(C) "Substantial and Grievous Economic Injury"

The Council proposes to adopt the FMLA regulation's definition of "substantial and grievous economic injury" from 29 CFR § 825.218(c). Rather than use language identical to that of the FMLA regulation, the Council proposes to alter it for clarity. The proposed amendment is necessary to clarify and make consistent the meaning of "substantial and grievous economic injury," which can be interpreted numerous ways. The proposed amendment would not alter existing law; it would effectuate Government Code section 12945.2, subdivision (r)(1)(B), clarify a point on which the current regulation is silent and conform it to the federal regulation, with which California employers subject to CFRA must also comply.

~~§ 11089, subd. (c)(d)(2)(D)~~ Requirement that Employer Timely Notify Employee of Intention Not to Reinstate

The Council proposes to delete this brief subdivision, which provides minimal guidance, and to replace it with more comprehensive guidance at proposed section 11089, subdivision (d)(2)(D). This amendment is necessary to avoid duplication.

~~§ 11089, subd. (c)(d)(2)(E)~~ Requirement that Employee Be Given Opportunity to Return if Leave Already Commenced

The Council proposes to delete this brief subdivision, which provides minimal guidance, and to replace it with more comprehensive guidance at proposed section 11089, subdivision (d)(2)(E). This amendment is necessary to avoid duplication.

§ 11089, subds. ~~(c)~~(d)(2)(D) Requirement that Employer Notify Employee in Writing that They Are a Key Employee; ~~(c)~~(d)(2)(E) Requirement that Employer Notify Employee in Writing of Intent to Deny Reinstatement; ~~(c)~~(d)(2)(F) Employee Remains Entitled To Benefits if They Do Not Return to Work After Notified of Employer's Intent To Deny

Reinstatement; ~~(c)~~(d)(2)(G) Employee Retains Right to Request Reinstatement
The Council proposes to adopt from 29 CFR §§ 825.219(a)-(d), the FMLA's procedure for notice of key employee status and how to treat a key employee on leave, because the CFRA regulation as currently drafted is too cursory. The Council proposes to rephrase the federal regulation to maximize clarity. This amendment is necessary to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply, to fully inform employers and employees of their responsibilities and the consequences of failing to act (e.g., notice as soon as practicable; maintaining benefits; confirming key employee status after CFRA leave; and losing the right to deny restoration in the event of failing to provide written notice).

§ 11089, subd. ~~(c)~~(d)(3) Fraudulently-obtained CFRA Leave
The Council proposes to adopt the FMLA's fraud defense from 29 CFR § 825.216(d). While courts likely would accept this common law affirmative defense under the existing regulation, codifying the defense is necessary to ensure employers' awareness of its applicability and to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply. The Council further proposes to explicitly place the burden on the employer to prove fraud as an affirmative defense.

§ 11090, Computation of Time Periods: Twelve Workweeks; Minimum Duration
The purpose of this section is to instruct how specifically to calculate CFRA entitlements and to proscribe minimum leave durations.

§ 11090, subd. (b) Leave Periods Common to Both CFRA and FMLA
The Council proposes to add to the CFRA regulations the four methods of calculating leave periods described in 29 CFR § 825.200(b) so as to make the regulations clearer and easier to use. The proposed change is not substantive, but rather would specify the methods the current regulation references, to avoid having practitioners consult the FMLA regulations. The Council further proposes to update the citation to the FMLA regulations to give the most recent, pertinent guidance to readers. This amendment is necessary to ensure that the CFRA regulations use the most recently issued federal regulations as a point of reference, and not create confusion by referring readers to federal regulations issued in 1993.

§ 11090, subd. (c) Defines "Twelve Workweeks"
The Council proposes to adopt from 29 CFR § 825.205(b)(3) the method for calculating 12 workweeks for an employee who works a variable schedule. This amendment is necessary because the existing regulation lacks this instruction and leaves employers and employees to devise their own calculation methods. As amended, the regulation would conform to the federal regulation, with which California employers must also comply, enabling all parties to uniformly calculate leave entitlement, ensuring consistency and eliminating litigation over the proper calculation method.

§ 11090, subd. (c)(2) Computation of Twelve Workweeks If Employee Works an Intermittent Schedule
The Council proposes to adopt 29 CFR § 825.203, which provides that if an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to disrupt the employer's operations. This change is necessary to expressly California employees' obligation to balance required leave with the needs of the business, in conformity with the federal regulation, with which California employers subject to CFRA must also comply.

§ 11090, subd. (c)(3) Calculation of Twelve Workweeks When Leave Term Includes a Holiday
The Council proposes to adopt from 29 CFR § 825.200(h) the method to calculate holidays for employees using CFRA leave in increments of less than one week. This amendment is necessary because the existing regulation applies only to employees taking CFRA leave for one or more weeks at a time. The new calculation method would apply as well to intermittent leave and conform California's method to the federal method.

§ 11090, subd. (c)(4) Effect of Overtime Requirement on Calculation of CFRA Entitlement
The Council proposes to adopt 29 CFR § 825.205(c) to clarify that an employee whose schedule includes overtime hours is required to use part of his or her CFRA allotment if he or she is unable to work more than 40 hours. Similarly, voluntary overtime hours not worked would not count against the allotment. This change is not substantive, but rather makes explicit a concept about which the existing regulations are silent and conforms them to the federal regulations, with which California employers subject to CFRA must also comply.

§ 11090, subd. (e) Minimum Duration for CFRA Leaves Taken for the Serious Health Condition of an Employee or their Family Member
The Council proposes to supplement this subdivision with the substance of 29 CFR § 825.202(b)(2), which states that intermittent leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position even if he or she does not receive treatment by a health care provider. This change is necessary for clarity, to ensure the availability of leave for chronic or reoccurring illnesses that may not necessitate the ongoing attention of a health care provider, and to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply.

§ 11090, subd. (e)(1) Employer May Require Employee to Transfer Positions Temporarily if Intermittent Leave is Required
The Council proposes to add from 29 CFR § 825.204(a) and 29 CFR § 825.204(b), respectively, that employers: (1) may agree to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care in exchange for the employee temporarily transferring to an alternative position; and (2) must comply with all collective bargaining agreements and relevant laws. These amendments are necessary so as to clarify that employers and employees are free to make agreements to supplement the law and that other applicable laws may provide further decisive guidance. These changes would not alter existing law, but rather: (1) conform State regulation to federal regulation, with which California employers subject to CFRA must also comply; and (2) reaffirm contract principals so that parties can make agreements that are mutually beneficial, while also complying with CFRA.

Additionally, the Council proposes to add that an employer may not transfer an employee to an alternative position to discourage the employee from taking leave or to otherwise impose a hardship on the employee. This change is necessary to prevent employers from penalizing employees who exercise their rights under CFRA. This change would not alter existing law, but rather clarify a point on which the current regulation is silent.

§ 11090, subd. (e)(3) Designation of Time as CFRA Leave Where Working a Reduced Shift is Physically Impossible
The Council proposes to adopt and augment the FMLA's intermittent leave and physical

impossibility regulation, 29 CFR § 825.205(a)(2). This amendment would not alter existing law, but rather clarify a point on which the current CFRA regulation is silent. The amendment the Council proposes would make clear that an employee may return to work if at least some aspects of the work are not physically impossible to complete, thereby reducing the amount of CFRA leave taken. This mitigation measure is necessary to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply, and to optimize employer productivity while maximizing the effective use of employee leave benefits.

§ 11090, subd. (e)(4) Employers May Deduct Exempt Employee's Pay Only as Permitted by the California Labor Code and Industrial Welfare Commission Wage Orders
The Council proposes to adopt an abridged version of 29 CFR § 825.206, broadly covering when an employer may deduct exempt employees' pay for CFRA intermittent leave or a reduced work schedule. The amendment would make clear that a deduction is appropriate in certain circumstances, and also advise readers to consult the controlling wage and hour laws, which are outside the Council's jurisdiction. The change would not alter existing law, but rather clarify a point on which the current regulation is silent and conform it to the federal regulation, with which California employers subject to CFRA must also comply.

§ 11091, Requests for CFRA Leave: Advance Notice; Certification; Employer Response
The purpose of this section is to specify procedures for employees to give notice and certify the need for CFRA leave and for employers to respond.

§ 11091, subd. (a)(1) Verbal Notice
In addition to rephrasing this subdivision to maximize clarity, the Council proposes to adopt the substance of 29 CFR § 825.304(e), allowing employers to waive their employees' notice obligations. This amendment is necessary to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply, and make express that employers are permitted to adopt more generous provisions than those required by CFRA.

§ 11091, subd. (a)(1)(B) Retroactive Designation of CFRA Leave Allowed
The Council proposes to add "without the employee's consent" to underscore that retroactive designation of leave as CFRA leave is prohibited unless the FMLA provides for it or an employee consents. This proposed amendment is not substantive, but rather reaffirms that the employer and employee may agree to terms outside of the typical CFRA framework.

§ 11091, subd. (a)(2) 30 Days' Advance Notice
No proposed change, but for one grammatical correction.

§ 11091, subd. (a)(4) Prohibition against Denial of Leave in Emergency or Unforeseeable Circumstances
No proposed change, but for one grammatical correction.

§ 11091, subd. (a)(6) Employer Response to Leave Request
The Council proposes to change the amount of time employers have to respond to a request for CFRA leave from 10 calendar days to five business days, conforming to 29 CFR § 825.300(b)(1). The amendment is necessary to eliminate the need for employers to comply with two different timelines and to ensure that the time allowed is neither too long, allowing for employers to disrupt employees' plans by filibustering, or too short, if holidays and weekends constitute a majority of the 10 calendar days. The amendment is necessary to conform the State regulation to federal

regulation, with which California employers subject to CFRA must also comply.

§ 11091, subd. (b)(1) Employer May Require Certification of Serious Health Condition of a Child, Parent or Spouse
No proposed changes, but for citation formatting and grammatical clarifications.

§ 11091, subd. (b)(2) Employer May Require Certification of Serious Health Condition of Employee
No proposed change, but for citation formatting and grammatical clarifications.

§ 11091, subd. (b)(2)(A) Employer May Require, At Own Expense, Second Certification if there is Reason to Doubt Validity of First Certification
No proposed change, but for grammatical clarifications and deleting text duplicative of Government Code section 12945.2(k)(3)(A)-(B).

§ 11091, subd. (b)(2)(E) Employer May Require Employee to Obtain "Return to Work" Release upon Return from Leave
In addition to grammatical clarifications, the Council proposes to adopt 29 CFR § 825.312(g), which provides that an employer may require an employee to obtain a return-to-work release from his or her health care provider, but only so long as the practice is not forbidden by a collective bargaining or other policy agreement. This change is not substantive, but conforms State regulation to federal regulation, with which California employers subject to CFRA must also comply, and reaffirms the right of employees to collectively bargain for certain privileges, even those covered by statute or regulations.

§ 11091, subd. (b)(3) Providing Certification
The Council proposes to add "no less than" before "15" to emphasize that employers may grant more than 15 days for employees to obtain certification. This change is necessary for clarity, because 15 days is meant to be a minimum and not a maximum. Additionally, the Council proposes to adopt the substance of 29 CFR § 825.305(d), which provides that, absent extenuating circumstances (e.g., unavailability of healthcare provider), if the employee fails to timely return the certification, the employer may deny CFRA protections for the leave following the expiration of the 15-day time period until a sufficient certification or recertification is provided. This change is necessary for clarity, because the existing regulation is silent on the consequences of failing to certify an illness, and to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply.

§ 11092, Terms of CFRA Leave
The purpose of this section is to specify employers' and employees' rights and responsibilities during and immediately following CFRA leave.

§ 11092, subd. (a) Terms of this Section Apply to the Extent they are Consistent with the Employee Retirement Income Security Act
No proposed changes, but for citation formatting. The Council proposes to strike specific citations to the United States Code so as to avoid confusion in the event the cited sections are renumbered by future statutory amendment. This change is not substantive.

§11092, subd. (b)(1) Employee May Elect to Use or Employer May Require Employee to Use Accrued Paid Time Off During CFRA Leave

The Council proposes to adopt the substance of 29 CFR § 825.207(a), allowing employers to mandate the use of sick leave to run concurrently with CFRA leave for the employee's serious health condition. The change would make clear that an employee may not follow 12 weeks of CFRA leave for her/his own serious health condition with sick leave, and that the employee may be paid during what would otherwise be an unpaid absence. This amendment is necessary for clarification and to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply.

§ 11092, subd. (b)(2) For Leave for Employee's Serious Health Condition, Employee May Substitute Leave Pursuant to a Disability Plan during CFRA Leave
Modifying parts of 29 CFR § 825.207(d), the Council proposes to adopt a rule allowing employees to use leave taken pursuant to a short- or long-term disability leave plan concurrently with CFRA leave. The amendment would make clear that employees may be paid during what would otherwise be an unpaid absence. This change is necessary for clarification and to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply.

§ 11092, subd. (b)~~(2)~~(3) Employer May Only Require Employee to use Accrued Paid Time Off if Leave Requested for a CFRA Qualifying Event
In addition to grammatical clarifications, the Council proposes to adopt the substance of 29 CFR § 825.207(c), which provides that if an employee uses paid leave under circumstances that do not qualify as CFRA leave, the leave would not count against the employee's CFRA leave entitlement. This change is not substantive, but rather makes explicit a concept about which the existing regulation is silent and conforms it to the federal regulation, with which California employers subject to CFRA must also comply.

§ 11092, subd. (b)~~(2)~~(3)(A) Employer May Not Ask Employee Whether the Purpose for Requested Paid Time Off is for a CFRA Purpose
No proposed change, but for reordering.

§ 11092, subd. (b)~~(2)~~(3)(A)(1) Employer May Inquire as to CFRA-Qualifying Purpose if Identified in Response to Denied Paid Time Off
No proposed change, but for reordering.

~~§ 11092, subds. (b)(3)~~ Employee May Elect to Use Sick Leave, ~~(b)(3)(A)~~ Use of Sick Leave for Serious Health Condition, ~~(b)(3)(B) Use of Sick Leave For Agreed Upon Reason~~
The Council proposes to delete this subdivision because it is duplicative of Government Code section 12945.2, subdivision (e), and is unnecessary in light of the proposed amendments previously described.

§ 11092, subd. (b)(4) Employer and Employee May Negotiate as to Employees Use of Paid Time Off
No proposed change, but for one grammatical correction.

§ 11092, subds. (c) Provision of Health Benefits, (c)(1) Employer Shall Maintain Health Coverage of Employee on CFRA Leave, (c)(2) Employer's Obligation to Continue Benefits Begins at time Leave Begins, (c)(3) All Benefits Included in Employer's Group Health Plan Shall be Continued, (c)(4) Employer May Continue Benefits Beyond CFRA Leave Term

No proposed change, but for citation formatting, grammatical corrections, and rephrasing to enhance clarity.

§ 11092, subd. (c)(5)(A) Employee "Failed to Return From Leave"
The Council proposes to adopt 29 CFR § 825.213(c),which provides that an employee who retires during CFRA leave or during the first 30 days after returning to work is deemed to have returned from leave. This change is necessary for clarification, because the existing regulation is silent on this point, and to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply.

§ 11092, subds. (c)(6) Maintenance of Group Health Care Coverage: Term; (c)(6)(A) Maintain until Employee's CFRA Leave is Exhausted; (c)(6)(B) Maintain until Employee Would Have Been Laid Off or Terminated; (c)(6)(C) Maintain until Employee Gives Notice of Intent Not To Return
The Council proposes to adopt the substance of 29 CFR § 825.209(f) to explain when employers can cease maintaining group health plan coverage. The amendment is necessary to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply, and to make unequivocal the situations when employers can cease maintaining group health plan coverage.

§ 11092, subds. (d) Employee Payment of Group Health Premiums; (d)(1) Method of Payment during Paid CFRA Leave; (d)(2) Method of Payment during Unpaid CFRA Leave; (d)(2)(A) May Require Payment at Usual Time of Payroll Deduction; (d)(2)(B) May Require Payment at Usual Time under COBRA; (d)(2)(C) May Require Pre-Payment Pursuant to Cafeteria Plan; (d)(2)(D) May Require Payment Under Existing Rules; (d)(2)(E) May Require Payment through Mutually Agreed Upon Method; (d)(3) Employer's Right to Cease Coverage; (d)(3)(A) Employer's Right To Recover Unpaid Premiums; (d)(3)(B) Employer Obligations Under CFRA Stand Regardless of Unpaid Premiums; (d)(3)(C) Wrongful Termination of Benefits by Employer
The Council proposes to adopt the substance of 29 CFR § 825.210, reworded to maximize clarity, to expressly state when employees must pay premiums for group health plan coverage. These regulations are necessary to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply, as well as for clarity and ease of use.

§ 11092, subd. ~~(d)~~(e) Other Benefits and Seniority
No proposed change, other than deleting "accrual" from the end of the title since this subdivision concerns seniority more generally and is currently inaccurately named.

§ 11092, subd. ~~(d)~~(e)(1) Treatment of Unpaid CFRA Leave as Compared to Other Leaves
The Council proposes to adopt and expand upon 29 CFR § 825.215(d)(4) by adding that "CFRA leave shall not constitute a break in service or cause the employee to lose seniority, even if other paid or unpaid leave constitutes a break in service for purposes of establishing longevity or seniority, or for layoff, recall, promotion, job assignment, or seniority-related benefits." This amendment is necessary to conform State regulation to federal regulation, with which California employers subject to CFRA must also comply, and to make express a point the existing regulations only imply.

~~§ 11092, subd. (d)(e)(2)~~ Seniority Accrual on Paid Leave
The Council proposes to delete this entire subdivision ("If the employer's policy allows seniority

to accrue when employees are out on paid leave, such as paid sick or vacation leave, then seniority will accrue during any part of a paid CFRA leave"), because it contradicts the first sentence of the previous subdivision ("Unpaid CFRA leave for the serious health condition of the employee shall be compared to other unpaid disability leaves whereas unpaid CFRA leaves for all other purposes shall be compared to other unpaid personal leaves offered by the employer"). Further, the sentence the Council proposes to add to the previous subdivision ("CFRA leave shall not constitute a break in service or cause the employee to lose seniority, even if other paid or unpaid leave constitutes a break in service for purposes of establishing longevity or seniority, or for layoff, recall, promotion, job assignment, or seniority-related benefits") clarifies and states correctly the right to continued accrual of seniority provided by statute. This deletion is necessary to maintain consistency between subdivisions and to clarify the concept of seniority accrual.

§ 11092, subd. ~~(d)~~(e)~~(3)~~(2) Employer Obligation to Notify Employee on Leave of Changes to Health Plan

The Council proposes to delete the first part of this subdivision because it duplicates the language of Government Code section 12945.2, subdivision (g), and replace it by adopting and elaborating upon 29 CFR § 825.215(d)(5), regarding new or expanded benefits for employees on CFRA leave. This amendment is necessary for consistency and clarification, because it is a quintessential benefit of CFRA leave to maintain benefits during times when medical attention is necessary, and the existing regulation is silent on this point, as well as to conform the State regulation to federal regulation, with which California employers subject to CFRA must also comply.

§ 11092, subd. ~~(e)~~(f) Continuation of Other Benefits

No proposed change, but for reordering.

§ 11092, subd. ~~(e)~~(f)(1) Right of Employer to Require Employee to Pay Premiums for Other Benefits

No proposed change, but for reordering.

~~§ 11092, subd. (e)(f)(A)~~ Employee Election Not to Pay Premiums

The Council proposes to delete this subdivision because it is duplicative of Government Code section 12945.2(f)(2).

~~§ 11092, subd. (e)(f)(A)(2)~~ Employer Not Required to Make Payments for "Time Accrued"

The Council proposes to delete this subdivision because it is duplicative of Government Code section 12945.2, subdivision (f)(2).

~~§ 11092, subd. (f)~~ Employee Status

The Council proposes to delete this subdivision because it is duplicative of Government Code section 12945.2, subdivision (g), and section 11089, subdivision (b)(1), of these regulations.

§ 11093, Relationship between CFRA Leave and Pregnancy Disability Leave; Relationship between CFRA Leave and Non-Pregnancy Related Disability Leave.

The purpose of this section is to explain the relationship between CFRA leave and other leave entitlements under FEHA. The Council proposes to change the title to better reflect its proposed clarifications.

§ 11093, subd. (b) Serious Health Condition – Pregnancy

No proposed change, but for grammatical corrections.

§ 11093, subd. (c) CFRA Leave after Pregnancy Disability Leave
No proposed change, but for grammatical corrections.

§ 11093, subd. (c)(1) Employer May Allow Use of CFRA Leave Prior to Birth of Child
The Council proposes to add that providing an employee all of the CFRA leave to which he or she is entitled does not excuse an employer from other obligations under the FEHA, such as reasonable accommodation under the FEHA's disability provisions. This amendment would not alter existing law, and is necessary to reaffirm that employees have rights in addition to those CFRA provides, which employers must consider when granting or denying leave.

§ 11093, subd. (d) Maximum Entitlement
No proposed change, but for grammatical corrections.

§ 11093, subd. (e) Disability Leave
Similar to the addition in section 11093, subdivision (c)(1), the Council proposes to clarify that, like disability leave and CFRA leave, pregnancy disability leave and CFRA leave are related but separate and distinct entitlements. This change is necessary to clarify misconceptions that the different types of leaves are combined rather than cumulative.

§ 11094, Retaliation and Protection from Interference with CFRA Rights
The purpose of this section is to implement CFRA's prohibition against retaliation and interference with CFRA rights, including its unlawful waiver.

~~§ 11094, subds. (a)~~ Prohibition on Discrimination Because of CFRA Leave, ~~(b)~~ Prohibition on Discrimination Because of CFRA Related Testimony
The Council proposes to delete this brief subdivision, which provides minimal guidance, and to replace it with more comprehensive guidance through the proposed subdivisions below.

§ 11094, subds. (a) Interference with CFRA Rights; (a)(1) Avoiding CFRA Compliance through Workforce Allocation; (a)(2) Preclusion of CFRA Leave by Altering Job Function; (b) Prohibition on Discrimination or Retaliation Due to Exercise of CFRA Rights; (c) Employees May Not Waive CFRA Rights; (d) Retaliation Protections Apply to All Individuals
The Council proposes to adopt the majority of 29 CFR § 825.220 to replace the existing sparse regulation prohibiting retaliation. This change is necessary to effectuate the most recent amendment to CFRA, AB 592 (Stats. 2011, ch. 678), which reads in part: "[12945.2](t) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section**,"** and to conform State regulation to federal regulation.

§ 11095, Notice of Right to Request CFRA Leave
The purpose of this section is specify employers' notice requirements, to ensure that workers receive the information necessary to exercise their CFRA rights.

§ 11095(a) Employers to Post Notice of Right to CFRA Leave
The Council proposes to add that electronic posting is sufficient to meet the posting requirement as long as the notice is conspicuous and posted where employees would tend to view it in the workplace. This amendment is necessary because many workers check digital resources much more frequently than physical bulletin boards, thus ensuring effective dissemination of CFRA

notices.

§ 11095(c) Non-English Speaking Workforce
Regarding “any facility or establishment contain[ing] 10 percent or more of persons who speak a language other than English as their primary language,” the Council proposes to change the ambiguous “shall translate the notice into the language or languages spoken by this group or these groups of employees” to “shall translate into every language that is spoken by at least 10 percent of the workforce.” This change is necessary for clarity and to create a definitive rule for determining when a translated notice is required. Ten percent was chosen because it is not so burdensome as to cause employers to translate the notice into numerous languages, but a large enough proportion of a workforce to necessitate translation. An absolute number would have put large employers at a disadvantage as they would have a greater number of employees whose primary language is not English, even if they only compose a small fraction of the workforce.

§ 11095(d) Text of Notice of Right to CFRA Leave
The Council proposes to amend this section to clarify that the guarantee of reinstatement is to the same position for pregnancy disability leave and to the same OR comparable position for CFRA leave. This change is necessary to conform the regulation to the language of the statute and ensure that the notice uses the same language as the statute. While the language is similar now, it would be identical if amended as proposed.

§ 11096, Relationship with FMLA Regulations
The Council proposes to update the citation to the current FMLA regulations, to give the most recent, pertinent guidance.

§ 11097, Certification Form
The Council proposes to delete the existing erroneous statement that to be covered by CFRA, inpatient care must be overnight, since that is not necessarily true. Notwithstanding grammar and stylistic changes, the rest of the form would remain the same.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Council did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the adoption of these regulations.

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

The Council has herein listed all alternatives it has considered applicable to specified subdivisions of these regulations. Having considered all 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 regulations without imposing any new burdens, will not affect small businesses because the California Family Rights Act applies only to businesses with 50 or more employees, as well as State of California and any of its political and civil subdivisions, and cities and counties, regardless of the number of employees.

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

The proposed amendments clarify existing regulations 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.

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. To the contrary, adoption of the proposed amendments to existing regulations 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.