



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
FAIR EMPLOYMENT & HOUSING COUNCIL
2218 KAUSEN DRIVE, SUITE 100, ELK GROVE, CA 95758
(916) 478-7248 | www.dfeh.ca.gov | e-mail fehcouncil@dfeh.ca.gov

FAIR EMPLOYMENT AND HOUSING COUNCIL
Meeting of February 6, 2014

Minutes

Elihu M. Harris State Building
1515 Clay Street, Room 2
Oakland, CA 94612

Councilmembers Present

Chaya Mandelbaum, Chairperson
Dale Brodsky, Councilmember
Chanée Franklin Minor, Councilmember
Patricia Perez, Councilmember
Andrew Schneiderman, Councilmember
Phyllis Cheng, DFEH Director and Ex Officio member

DFEH Staff Present

Annamarie Billotti, DFEH Chief of Dispute Resolution, Legislative and Regulatory Affairs
Brian Sperber, DFEH Legislative and Regulatory Counsel
Mallory Sepler-King, DFEH Civil Rights Fellow
Josephine Blue, DFEH Executive Assistant

Others Present

Debbie Booker, Former DFEH Consultant
Regina Brown, Administrative Law Judge, Office of Administrative Hearing
Claudia Center, Senior Staff Attorney, Legal Aid Society-Employment Law Center
Tony Diaz, Teacher, California Teachers Association
Paul Dumont, Advocate, Sober Living Network
Shireen Housain, Attorney
Jaime Reyes, Retired DFEH District Administrator
Rachel Langston, Staff Attorney, Legal Aid Society-Employment Law Center
Noah Lebowitz, Partner, Duckworth Peters Lebowitz Olivier LLP, Board Member,
California Employment Lawyers Association
Claire Ervin Lee, Senior Staff Counsel, Department of Social Services
Bob Meola, Spouse of former DFEH Housing District Administrator Susan Sheftel
Marlene Massetti, Retired DFEH District Administrator
Saira Najam, Associate, Davis Wright Tremaine
Fred Nisen, Attorney, Disability Rights California
Gordon Piper, Retired DFEH District Administrator
Jennifer Reisch, Legal Director, Equal Rights Advocates
Emma Regidor, Attorney, California Department of Corrections and Rehabilitation

Page 1

Gwen Richardson, Retired DFEH Mediator
Dorothy Sun, Information and Assistance Officer, Division of Workers Compensation—
Disability Evaluation Unit, Former DFEH Housing Consultant
Lindsey Urbina, Senior Staff Counsel, Division of Workers Compensation, Former DFEH Senior Staff
Counsel
Keasara Williams, Staff Attorney, Equal Rights Advocates
Mariko Yoshihara, Political Director, California Employment Lawyers Association
Additional 19 morning and 10 afternoon live streams were recorded via Webcast

I. Welcome, Opening Remarks, and Introduction of Council and Guests

Chair Mandelbaum called the meeting to order. Josephine Blue called roll for the Council.

II. Approval of the Minutes

The Council voted to approve the minutes from the December 10, 2013 meeting.

III. Councilmember Reports

Chair Mandelbaum and Councilmember Brodsky reported that they will speak and Director Cheng will moderate a panel presentation on proposed amendments to the California Family Rights Act Regulations at the April 26, 2014 State Bar of California Labor & Employment Law Section's Combined Annual Meeting/Public Sector Conference in Berkeley. They will also make the same presentation at the September 2014 State Bar of California Annual Meeting in San Diego.

Chair Mandelbaum announced that he accepted a new position as partner at Rudy Exelrod Zieff & Lowe LLP.

IV. Department of Fair Employment and Housing Report

Director Cheng gave an update on the Department's activities reported in the [2013 DFEH New Fairtimes](#). The Department was awarded the State Bar's Education Pipeline Award for 2013. Additionally, the Department entered into a five-year [settlement](#) agreement with the [City of San Diego](#) on a Director's complaint for injunctive relief, which framework will serve as a model for all local government agencies' sexual harassment training.

V. Guest Speaker

a. Housing Discrimination: View from the Defense Bar

Kelly G. Richardson, Managing Partner and Co-Founder of Richardson, Harman, Ober, PC, spoke about the current state of housing law in California from a property owner, development board and realtor perspective. He asked the Council to provide guidance in its upcoming Housing Regulations on the obligations of landlords and property owners. See the attached [written presentation](#) by Mr. Richardson.

b. Housing Discrimination: View from the Plaintiff Bar

Christopher Brancart, Partner, Brancart & Barncart, spoke on the current state of housing law in California from a plaintiff perspective. Mr. Brancart emphasized the need to focus on areas not already regulated by the federal Fair Housing Act Regulations and where California's Fair Employment and Housing Act provides greater protections.

VI. Public Comment Period

Public comment regarding their perceptions of the operations of the DFEH and the Senate Office of Oversight and Outcomes Report was given by Marlene Massetti, Lindsay Urbina, Gordon Piper, Bob Meola and Claire Ervin Lee.

Public comment addressing the Council’s rulemaking authority was given by Paul Dumont, a housing and sober-living advocate. Mr. Dumont urged the Council to consider including specific protections for people in recovery when drafting the land use and occupancy standard provisions of the future Housing Regulations.

Lunch Break

The Council adjourned for lunch at 12:15 p.m. and reconvened at 1:30 p.m.

VII. Legislative Update

Anmarie Billotti provided a legislative update on AB 556 (Salas)(adding “military and veteran status” to the list of categories protected from employment discrimination by the Fair Employment and Housing Act) and SB 292 (Corbett)(clarifying that sexually harassing conduct need not be motivated by sexual desire) which recently became law. She also provided an update on pending legislation that includes AB 1562 (Gomez) (reducing the hours worked requirement for school employees to take California Family Rights Act leave); AB 1443 (Skinner) (protecting interns from employment discrimination in hiring and from harassment); and SB 404 (Jackson) (adding “familial status” to the list of categories protected from employment discrimination by the Fair Employment and Housing Act).

VIII. Update on Adopted Proposed Amendments to the California Family Rights Act Regulations

Ms. Billotti provided an update on the Council’s Adopted Proposed Amendments to the California Family Rights Act Regulations, which had been submitted to the Office of Administrative Law for review. Chair Mandelbaum acknowledged receipt of comments on the proposed amendments from several parties, and encouraged them to resubmit these comments during the official comment period.

IX. Draft Proposed Amendments to the Fair Employment and Housing Act Regulations Subcommittee

a. Discussion

Councilmembers Brodsky and Perez presented the proposed amendments to the Fair Employment and Housing Act Regulations (FEHA). Chair Mandelbaum proposed several grammatical changes. Councilmember Brodsky acknowledged receipt of comments from the Transgender Law Center, and the Council agreed that the section defining gender identity and related terms should be amended. The Council agreed that the proposed language regarding assistive animals in disability accommodations should be clarified. Councilmember Brodsky explained the reasoning behind the edits to the definition of “four months” of pregnancy disability leave. Councilmember Perez reviewed the proposed changes to sexual harassment training and introduced the concept of Council guidelines on this topic. Ms. Billotti reviewed proposed the changes to Subchapter 5.

b. Public Comment

Claudia Center commented in favor of repeating statutory language for the sake of clarity. She pointed out several areas in the proposed amendments to the FEHA Regulations where language may be misleading or should otherwise be clarified. Ms. Center encouraged the Council to clarify areas that are unclear through federal regulations, or that should be more protective than federal regulations. Ms. Center expressed her agreement with the proposed language by the Transgender Law Center.

Rachel Langston commented on the clarity and breadth of various provisions in the current FEHA Regulations. She encouraged the Council to replace “four months” with “17 1/3 weeks” of pregnancy disability leave throughout the FEHA regulations to ensure equal leave time. Ms. Langston expressed concern with the proposal to certify trainers for sexual harassment training. She further encouraged the Council to reconsider several disability provisions that might put an undue burden on employees.

Noah Lebowitz, on behalf of CELA, commented that the regulations on pregnancy and disability should not be updated more than necessary, as practitioners are familiar with the current version. He expressed his lack of concern with the regulations being duplicative of the statute if it helps with clarity.

c. Action by Council

The Council unanimously decided to hold off on adopting proposed amendments to the FEHA Regulations at this time.

d. Update on Timeline for Rulemaking

The Council agreed to make the proposed edits and review revised proposed amendments to the FEHA Regulations at the next meeting.

X. Report of the Housing Regulations Subcommittee

Councilmembers Schneiderman and Franklin Minor introduced the proposed FEHA Housing Regulations drafting process, which has commenced. Mallory Sepler-King gave an update on the current research underway, including occupancy standards and identifying distinctions between FEHA and the federal Fair Housing Act and HUD rules.

XI. Formation of Government Code sections 11135-11139.5 Subcommittee

Chair Mandelbaum requested volunteers to serve on the subcommittee to review and develop future regulations on Government Code sections 11135-11139.5 and to assist the Secretary of Health and Human Services implement the statutory provisions. Councilmembers Franklin Minor and Schneiderman volunteered.

XII. Upcoming Meetings

Chair Mandelbaum announced the next Council meeting, which will be held on April 7, 2014, 10 am-4 pm, at the University of California, Irvine School of Law.

XIII. Public Comment

Chair Mandelbaum asked for public comment. Seeing none, Director Cheng stated that anyone who wanted to comment at a later date may e-mail the Council at FEHCouncil@dfeh.ca.gov.

XIV. Adjournment

There being no further business to conduct, Chair Mandelbaum adjourned the meeting at 3:32 p.m.

Date: February 28, 2014

CHAYA MANDELBAUM
Chair

JOSEPHINE BLUE
Executive Assistant