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5	FAIR EMPLOYMENT AND HOUSING COUNCIL
6	MEETING MINUTES OF JULY 17, 2017
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8	LOCATION:
9	California Public Utilities Commission
10	505 Van Ness Avenue
11	San Francisco, California 94102
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20	ATKINSON-BAKER, INC. COURT REPORTERS
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24	FILE NO: AB077C8
25	LILL NO. ADV//CO

1 PROCEEDINGS	1 c	omments to the council at FEHCouncil@DFEH.CA.gov or
2 JULY 17, 2017		ou can mail them instead to the Council, care of
3	· ·	Brian Sperber at the DFEH's Los Angeles office at 320
4 CHAIR CHAYA MANDELBAUM: So we're ready		Vest 4th Street, 10th Floor, L.A., California 90013.
5 for our public hearing. So without further adieux,		f you have brought written copies of your comments
 we'll begin. So we're on the record. It is a little 		nd you do not plan to separately submit them, please
 bit before 10:30 on Monday, July 17th. We're here at 		ave a copy given to Brian Sperber. If you have not
8 the California CPUC Auditorium in San Francisco.		rought a copy of your comments, please make sure
9 My name is Chaya Mandelbaum, Chairperson	-	hey're delivered by 5:00 p.m. today.
¹⁰ of the Fair Employment and Housing Counsel. Joining	10	Anyone who testifies here today or who
11 me today are members of the Council, Councilmembers		ubmits a copy will receive a copy of any amendments
12 Dale Brodsky, Dara Schur, Tim Iglesias, Joseph Ortiz		r changes that Council makes to the proposed
¹³ and Lisa Cisneros, along with Ex-officio Director of		egulations as will anyone who makes such a request.
, 5	14	
		Also, anyone who testifies or submits
		vritten comments will have a chance a 15-day period
 16 the hearing portion of this meeting. 17 The purpose of this hearing is to 		vithin which to make comments on any changes that
		Council elects to make to the proposed regulations
	10 a	s part of the rulemaking process. So we'll consider each comment made here
5 5 5	1	
5		oday, as well as all written comments received, and
1 11 5	1	hen we'll respond to all those comments in the final
5 1 5		tatements of reasons, which will become part of the
 government code at 12900, et seq, as it relates to employment the FEHA prohibits harassment and 		Council's rulemaking record. The hearing is being
		ranscribed by a court reporter, so the transcript of
²⁵ discrimination because of race, religious creed,	25 tl	he hearing, as well as all the written comments,
Page 2		Page 4
1 color notional origin anagota, physical	1	will be weat of the underselving around
1 color, national origin, ancestry, physical	1 v 2	vill be part of the rulemaking record.
 2 disability, mental disability, medical condition, 3 genetic information, marital status, sex, gender, 		Because it's being transcribed, it's
		critical that anyone speaking does so clearly and
general mental general and reaction general		slowly, and that only one person speak at a time.
	1 .	You will not be sworn in today when you testify, but
		ve do ask that you come to the front of the room and
spp on and company of the generative at		speak into the microphone, so that CHAIR CHAYA
····· -, ······ ···· ···· ···· ···· ···	8 N 9	ANDELBAUM reporter can take down your testimony.
		Please also begin by spelling your name
 10 of the room and reflect an Attachment D to the 11 meeting material and the notice and initial statement 		and stating your affiliation. Also, for our benefit
5		f you are commenting on a specific regulation,
		please remember to identify the section and subsection of the regulations, so that we may refer
 respectfully. The text of the Council's regulations are also available on the Council's web page 		
15		o it as you speak. We will hear testimony this
5,		norning until all those wishing to testify have had
	16 a 17	an opportunity to do so.
	1	Does anyone have any questions?
18 We noticed the hearing 45 days ago in	18 10 h	All right. I think we're ready to
19 the California Register notice published on June 2nd,		begin. So whoever wants to kick off our public
20 2017, and also via e-mail sent to more than 7,500		hearing first, please step up.
²¹ individuals and stakeholders and through the	21	SPEAKER DIAZ: Hi, there. Good morning.
22 Council's web page. Pursuant to that notice we're	22	First, thank you to the Chair Chaya
23 taking testimony on the proposed amendments, and we		Andelbaum and the councilmembers for undertaking
24 also accept written testimony and comments until		his normal process and providing us this opportunity
25 5:00 p.m. today, July 17th. You may e-mail written	25 t	o comment.
Page 3		Page 5

2 (Pages 2 to 5)

1prejudice and legitimize that, which serve only2prejudice and this is when clear case law that deals3with other forms of discrimination such as racially4discrimination, where an employer cannot justify a5racially discriminatory policy based simply on a6co-worker's preference, for example, to not have7someone of that race in the workplace, and so that we8believe that situation is no different from someone9who simply prefers not to hear Spanish, for example,10and a co-worker who prefers not to hear Spanish, for example,11an employer, who, therefore, adopts an English-only12policy in order to cater to that preference.14safely provide this provision to just add co-worker15preference in addition to the customer preference.16COUNCILMEMBER BRODSKY: Are you finding17that has come up in your practice?18SPEAKER DIAZ: Yes, it definitely comes19up, and also, the EEOC also addresses this in their202016 guidance and gives some good examples of how21language neutral and general policies that many23address this type of situation without creating a24desperate impact on a national origin minority group25in the workplace.			1			
2 M-AR-15-AL Last name D-1-AZ, and I am a staff 3 attomey at Legal Aid at Work, which is a public 4 interest law firm here in San Francisco, and I work 5 in the national origin immigrants rights program 6 mole california law there is a presumption that 7 who have faced national origin discrimination in the 9 I have submitted written comments via 9 I have submitted written comments via 10 of those comments and to highlight some of the key 12 Section 11028(a)(3), which is on page 2 of the 14 So, first, I wanted to address 15 Section 11028(a)(2), which is on page 2 of the 16 Section 11028(a)(2), which is on page 2 of the 17 proposed regulations, and this provision addresses - 18 putfication for a language restrictive policy, and 19 we would strongly encourage the council to revise 11 prejudice and legitimize that, which serve only 12 prejudice and legitimize that, which serve only 14 language restrictive policy, as allowing this to 15 prejudice and legitimize that, which serve only 14 prejudic	1	My name is Marisa Diaz spelled	1	So if there are no questions on that I		
3 attorney at Legal Aid at Work, which is a public 3 regulations, and as this provision attractly states 4 interest law firm here in San Francisco, and I work in the national origin insmigrants rights program 4 under California law there is a presumption that 6 where we focus on advocating on behalf of workers, in the national origin inscrimination in the 5 7 workplace. a paper factor attain smade out that prima face case, then 8 the burden automatically shifts to the defendant to 9 n have submitted written comments via 10 of those comments and to highlight some of the key 11 of those comments and to highlight some of the key 12 points, and I'm welcoming any of your questions or 13 section 11028(a)(1), and this provision addresses 14 propage of this policy, and 15 Section 11028(a)(1) states only that an employer has 16 propage of this policy, and 19 we would strongly encourage the council to revise 10 projection fa alanguage restrictive policy, as allowing this to 12 prejudice and legitimize that, which serve only 24 language-restrictive policy, as allowing this to						
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18 justification for a language restrictive policy, and 19 we would strongly encourage the council to revise 19 be revised to read, first, that English-only rules 20 are presumed to violate the act on the basis of 21 preference. Here neither customer, nor a co-worker 21 has a pleasure of speech in languages other than 22 an employer must prove the elements listed in Section 23 English to be a legitimate reason to justify a 24 language-restrictive policy, as allowing this to 25 happen would cater and serve to only perpetuate 26 Prejudice and legitimize that, which serve only 2 prejudice and legitimize that, which serve only 2 prejudice and legitimize that, which serve only 3 tracially discrimination such as racially 4 discrimination, where an employer cannot justify a 3 racially discrimination such as racially 4 discrimination such as racially 9 believe that situation is no different from someone 10 and a co-worker who prefers not to hear Spanish, for example, 10 and a co-worker who preference. So for 112						
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24 language-restrictive policy, as allowing this to 24 various elements that are listed in that in the 25 happen would cater and serve to only perpetuate Page 6 1 prejudice and legitimize that, which serve only prejudice and this is when clear case law that deals 3 with other forms of discrimination such as racially 1 business necessity and the notice requirement, for 2 example. So we believe that would just be more 2 complex that are in the workplace, and so that we 3 discrimination, where an employer cannot justify a 5 already does that by referencing business necessity, You don't think it 4 discrimination is no different from someone 9 who simply prefers not to hear Spanish, for example, 10 and a co-worker who prefers not to hear Spanish and 11 SPEAKER DIAZ: No. Yeah, I don't think 14 safely provide this provision to just add co-worker 10 11028(a)(1), the A says the policy is job related and 15 preference in addition to the customer preference. SPEAKER DIAZ: Yes, it definitely comes 16 Durden, but then there is also the notification 17 that has come up in your practice? 18 SPEAKER DIAZ: Yes, it definitely comes						
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Page 6Page 61prejudice and legitimize that, which serve only2prejudice and this is when clear case law that deals3with other forms of discrimination such as racially4discrimination, where an employer cannot justify a5racially discriminatory policy based simply on a6co-worker's preference, for example, to not have7someone of that race in the workplace.8believe that situation is no different from someone9who simply prefers not to hear Spanish, for example,10and a co-worker who prefers not to hear Spanish and11and a co-worker who prefers not to hear Spanish and12policy in order to cater to that preference.13those reasons we strongly encourage the Council to14safely provide this provision to just add co-worker15preference in addition to the customer preference.16COUNCILMEMBER BRODSKY: Are you finding17that has come up in your practice?18SPEAKER DIAZ: Yes, it definitely comes19up, and also, the EEOC also addresses this in their122016 guidance and gives some good examples of how13address this type of situation without creating a24desperate impact on a national origin minority group25in the workplace.						
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25in the workplace.25an overriding legitimate business purpose such that	23	address this type of situation without creating a	23	Business necessity is defined in two for		
	24	desperate impact on a national origin minority group	24	purposes of the subsection business necessity means		
Page 7	25	in the workplace.	25	an overriding legitimate business purpose such that		
raye / Page S	1	Page 7		Page 9		

3 (Pages 6 to 9)

1	is necessary.	1	So we would suggest adding a new		
2			section. It would be 11028(a)(5), which would be on		
3	,,		page 2 of the current draft regulations, and it would		
4	provision, but subsection four, the one I'm focusing	4	state: To meet its burden it is not sufficient that		
5	on, if you were to just read that section, it would	5			
6	one would understand that the employer just has to	6	unsupported assumptions about the need for a language		
7	prove business necessity wherein, in fact, the	1	 restrictive policy, and we would recommend that same 		
8	provisions directly above this say that they have to	8	type of language be added to the end of		
9	prove business necessity, also, that the policies	9	Section 11028(b), which deals with accent		
10	nearly tailored and that it has effectively notified	10	discrimination, and at Section 11028(c), which deals		
11	its employees of the policy and the consequences for	11	with English-proficiency requirements, and in our		
12	violating it. So we make the suggestion just for	12	written comments we have included the specific		
13	consistency and so that it's as clear as possible,	13	language for each of those additions as well.		
14	first, that there is a presumption that there is a	14	Okay. Now, moving on to discovery and		
15		15			
	desperate impact, and secondly, what the employer has		into immigration status. First, I just want to thank		
16 17	to show to rebut that presumption.	16 17	the Council again for addressing this issue in the		
18	Okay. So if there are no other	18	proposed regulations. As I'm sure many of you are		
	questions, I'll move on to another issue regarding	1	aware, actual discovery or even the potential that		
19 20	burdens of proof in language discrimination cases.	19	there could be discovery into immigration status can		
20	So whether a case deals with a language-restrictive	20	have a very extreme, chilling effect on individual		
	policy, an English-proficiency requirement, or accent	21	claimants, and also, the broader immigrant worker		
22	discrimination, there is always unfortunately a	22	community. So I think it's very important that these		
23	possibility that unfounded assumptions will pervade	23	regulations do address this, and we thank you for		
24	the fact finder's analysis in determining whether a	24	doing that. We would we made some suggestions in		
25	given policy or an act violates the FEHA, and in our	25	our written comments to just make this area of the		
	Page 10		Page 12		
1	written comments we have cited to several cases in	1	law even clearer in the regulations, first, to make		
2	the Title 7, context that illustrate this point.	2	clear that in the liability phase there is there		
3	I'll highlight one today. That's a seventh circuit	3	is no discovery allowed in immigration status, and		
4	case where CHAIR CHAYA MANDELBAUM upheld a very	4	secondly, during the remedies phase, there is a		
5	broadening proficiency that required, both, verbal	5	certain standard that are set in California law,		
6	and written English proficiency for nearly all job	6	where by which the employer would have to prove by a		
7	classifications in a large medical facility, and that	7	clear and convincing evidence that this inquiry is		
8	covered things within the maintenance department, the	8	necessary, and then, also, that this discovery can		
9	whole gamut of jobs in that environment.	9	only be used for purpose of determining the remedies.		
10	In upholding the judgment in favor of	10	So it's more of a structural suggestion that we've		
11	the defendants in that case, the seventh circuit	11	made, and I would refer you to our written comments		
12	noted, quote, that it would suppose that English is	12	to look at that, and then, also, the specific		
13	most likely to be the common language of a majority	13	language, but I just wanted to highlight that we		
14	of patient and the like, therefore, deficiencies in	14	think it's the regulations do a great job. We		
15	English is a language deficiency most likely to be	15	suggest that just further clarity, and this would be		
16	troublesome with an employee of a hospital located	16	helpful, and then I'm going to move to the driver's		
17	well in the interior of a supposedly English-speaking	17	license provisions. So that's on page 4 of the		
18	nation.	18	proposed regulations.		
19	So this is a case that unfortunately	19	So, we suggest that the Council add a		
20	demonstrates some of the assumptions that can come in	20	new provision under Section 11028(g), which as I		
21	to play in these types of cases, and we think that	21	said, deals with driver's licenses that are issued		
22	these regulations provide a really important	22	under California Vehicle Code 12801.9, and this		
23	opportunity for the Council to clarify the burdens on	23	provision that we suggest would make clear that		
24	each party, and also, what each party has to do to	24	possession of this type of license would not		
25	meet those burdens.	25	constitute the clear and convincing evidence required		
	Page 11		Page 13		
L	5	1			

4 (Pages 10 to 13)

2 remedies phase of a proceeding. 2 driver's	n regarding this your suggestion around the slicense. Are there some scenarios where an
	license. Are there some scenarios where an
3 So, the language that we suggested is 3 employed	
	ee would have a driver's license under
4 that an employer applicant possesses a driver's 4 Section	12801.9, and actually, be authorized to work
	J.S.? Can you explain what those scenarios
6 does not constitute clear and convincing evidence for 6 would b	
7 purposes of Section 11028(f)(2)(b), which we refer to 7	SPEAKER DIAZ: Yeah, a doctor recipient
	nave a license. People who are in different
	of the asylum process, so it's not synonymous
	ing undocumented necessarily.
11 considered when determining whether an employer has 11	COUNCILMEMBER CISNEROS: An asylum
	nt is eligible for employment authorization
	50 days of their application pending.
14 immigration status as described under Section 14	SPEAKER DIAZ: So there is no requirement
5	meone has to have, you know, change the type
	ise they have if they were to change status or
	DACA, and just in general the eligibility
5	ments are eligible to all residents in
	hia. So we don't think that meets the clear
	nvincing standard.
21 the possession of this license is a violation of the 21	COUNCILMEMBER CISNEROS: I have another
	on about one of your suggestions. This relates
	ng the language it's not sufficient this is
	r proposal around a new section 11028,
	tion (a)(5), where you suggest adding it is not
Page 14	Page 16
1 So we think this is a related point and 1 sufficien	nt an employer rely on subjective beliefs or
	tions about the need for a language restrictive
	nd you propose adding that same language to
5 / //	subsection (b) and (c), but you don't propose
	that language to subsection (d) about foreign
	, and I was wondering if there is a
	ar reason for if it were to be added, do
,	nk it wouldn't be applicable to 11028,
	ion (d), foreign training and experience. It
	vful for employment practice. It is an
	Il employment practice pursuant to permissible
	e for an employer or other covered entity to nployment opportunities to an individual
	e the individual received training or education of the United States or were to require an
55 (7)	al to be foreign trained.
	SPEAKER DIAZ: I could see that be useful
	ther and equally applicable. That's a good
5, 5, 5, 5, 1,	at we hadn't considered.
20 immigration status and language or speakers and 20	COUNCILMEMBER CISNEROS: Thanks.
21 specific languages in our comments on those. 21	SPEAKER DIAZ: Okay.
22 So, that is all for now unless there are 22 23	CHAIR CHAYA MANDELBAUM: Thank you very
24 Okay. Well, thank you so much. 24	SPEAKER DIAZ: Thank you.
25 COUNCILMEMBER CISNEROS: I have a 25	CHAIR CHAYA MANDELBAUM: Anyone else
Page 15	Page 17

5 (Pages 14 to 17)

1	wishing to testify regarding the national origin	1	language restrictions? I mean, I think it's implied	
2	regulations?	2	because of the reference back to 11019(b), which is	
3	5		the harassment that talks about hostile work	
4			environment but	
5	in San Francisco, here today in my capacity as the	45	SPEAKER LEBOWITZ: Understood. We think	
6	chair of the California employment lawyers	6	that it's important that it's explicit within the	
7	association, FEHC regulations Task Force. We have	7	language restrictions regulations especially due to	
8	not yet submitted our written comments for these	8	the Federal regulation on point as well as the	
9	regulations. We will do so by the end of today, and	9	Federal case law that we cite in our in our letter	
10	we have a number of sections that we're addressing,	10	to the Council, which includes a Ninth Circuit case	
11	some minor tweaks, some other more significant.	11	which the excuse me in the Garcia versus	
12	The one thing I want to highlight today	12	Spontate (phonetically) from 1993, which at the	
13	and although I will mention that most of what we are	13	relevant page says, quote, "Likewise we can envision	
14	submitting is similar, if not precisely what we	14	a case in which such rules are enforced in such a	
15	submitted several months ago while these regulations	15	draconian manner that the enforcement itself amounts	
16	were in draft near the end of that process, so most	16	to harassment." So that is specifically talking	
17	of what we submit today will be familiar to members	17	about the language restriction rules and enforcement	
18	of the Council who were involved in that process.	18	of language restriction policies.	
19	What I want to address today two	19	The second section that we propose	
20	subsections that we're asking be added to the	20	adding, again, in our letter designated as	
21	regulations to the proposed regulation within the	21	11028(a)(6) were to read as follows and it's a	
22	language restrictions section. So we're looking at	22	little wordy. It probably needs some work. This is	
23	Section 11028, subsection (a), and these are	23	what we come up at this point. Implementation of	
24	subsections that we have designated as five and six.	24	language restrictions may also constitute an	
25	Obviously, if you incorporate other folks, you	25	employment practice that adversely affects an	
20		20	Page 20	
	Page 18		raye 20	
1	renumber as needed in the subsection. The first is	1	employee's enjoyment of an employment benefit by	
2	I'll just read it. Obviously, you will see it all	2	prohibiting bilingual employees whose primary	
3		3	language is not English from communicating in a most	
	there in writing today, but our proposed section 5			
4	would say language restrictions language excuse me	4	effective language, and, again, this is a broader by	
5	language restriction policies including English	5	using the words by incorporating the employment	
6	only rules may create a hostile work environment for	6	benefit language that is defined elsewhere in the	
7	non-English and bilingual workers. The hostile or	7	regulations ensures that not only are we talking	
8	harassment negotiation or sentiment we do not really	8	about the original justification for the language	
9	see in any other part of the existing proposed	9	restriction policy, but we also address how it's	
10	regulations, so we want to make sure that that idea	10	being implemented, and, again, this is something that	
11	is explicit within the proposed regulations. We draw	11	is drawn from authority Federal authority, for	
12	for authority for this proposal both from Federal	12	instance, in the EEOC guidance, section 5 on national	
13	regulations and from Federal case law. The Federal	13	origin discrimination section 5, subsection	
14	regulations, specifically 29 CFR, section 106.7,	14	(c)(2), specifically addresses this idea, and, again,	
15	which recognizes that implementation of a language	15	this and also this idea has been recognized by the	
16		16	Fair Employment Housing Commission when it was still	
	restriction policy, quote, or may, quote, "result in			
17	restriction policy, quote, or may, quote, "result in a discriminatory working environment," unquote.	17	in effect and still operating in its adjudicatory	
		17 18		
17	a discriminatory working environment," unquote.		in effect and still operating in its adjudicatory	
17 18	a discriminatory working environment," unquote. That's, again, a sentiment we don't necessarily we believe are in the existing proposals in these	18	in effect and still operating in its adjudicatory function in the DFEH versus national bindery case,	
17 18 19	a discriminatory working environment," unquote. That's, again, a sentiment we don't necessarily we believe are in the existing proposals in these regulations.	18 19	in effect and still operating in its adjudicatory function in the DFEH versus national bindery case, which we cite and quote at length in our paper. So, we just want to highlight those two subsections	
17 18 19 20 21	a discriminatory working environment," unquote. That's, again, a sentiment we don't necessarily we believe are in the existing proposals in these regulations. COUNCILMEMBER BRODSKY: Can I ask you a	18 19 20 21	in effect and still operating in its adjudicatory function in the DFEH versus national bindery case, which we cite and quote at length in our paper. So, we just want to highlight those two subsections two proposed new subsections to make sure that the	
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17 18 19 20 21 22 23	a discriminatory working environment," unquote. That's, again, a sentiment we don't necessarily we believe are in the existing proposals in these regulations. COUNCILMEMBER BRODSKY: Can I ask you a question about that? Is there a reason why you would not maybe in addition to that add it to the	18 19 20 21 22 23	in effect and still operating in its adjudicatory function in the DFEH versus national bindery case, which we cite and quote at length in our paper. So, we just want to highlight those two subsections two proposed new subsections to make sure that the Council takes a good look at those, and if you have any other questions about that.	
17 18 19 20 21 22 23 24	a discriminatory working environment," unquote. That's, again, a sentiment we don't necessarily we believe are in the existing proposals in these regulations. COUNCILMEMBER BRODSKY: Can I ask you a question about that? Is there a reason why you would not maybe in addition to that add it to the harassment section (J) or put it there instead of, so	18 19 20 21 22	in effect and still operating in its adjudicatory function in the DFEH versus national bindery case, which we cite and quote at length in our paper. So, we just want to highlight those two subsections two proposed new subsections to make sure that the Council takes a good look at those, and if you have any other questions about that. CHAIR CHAYA MANDELBAUM: Thank you, Mr.	
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6 (Pages 18 to 21)

1					
1	SPEAKER LEBOWITZ: Thank you very much.	1	national origin regulations, so if it's not		
2			appropriate at this time, then I can bring another		
3			time, let me know, but it is in the regulations with		
4	SPEAKER HERRINGTON: It's Joan Herrington	3	respect to the definition of employers in		
5	and my law firm is the Bay Area Employment Law	5	Section 110008. Would that be appropriate at this		
6	Office. Herrington is H-E-R-R-I-N-G-T-O-N.	6	time to address?		
7	I just want to put in a plea to the	7	CHAIR CHAYA MANDELBAUM: Sure. I mean,		
8	Council in the initial statement of reasons	8	to the extent, at least, that employer incorporates		
9		9			
	supporting the regulations for national origin.		itself into the regulations by virtue of existing		
10	There is a single Federal cite, for example. It is	10	SPEAKER VERNOFF: Yeah, I don't know that		
11	so helpful for people who want to educate judges that	11	I specifically sent written comments, but I did		
12	the regulations are always retroactive that the	12	submit an e-mail to Mr. Kish on Friday regarding this		
13	Council cannot make new law. They can only interpret	13	issue, and I don't know if he recalls. With respect		
14	the existing law that we have better citations	14	to subsection (d)(1), and so the provision reads, you		
15	supporting each of these subsections that the Council	15	know, regularly employing means employing five or		
16	has relied on in reaching these regulations. I can't	16	more individuals working day and 20 consecutive weeks		
17	stress how helpful it is to have point-by-point	17	in the current calendar year or preceding calendar		
18	authority that the Council relied on. That's my own	18	year.		
19	personal recommendation, and it's not necessarily for	19	I am currently facing an issue with this		
20	language of the regulations, but for amplification in	20	regulation that is currently up on a motion for		
21	the final statement of reasons.	21	summary judgment, and it could result in my case		
22	Thank you.	22	being thrown out due to the language, and so I wanted		
23	CHAIR CHAYA MANDELBAUM: Thank you, Miss	23	to bring attention to the ambiguity here, so,		
24	Herrington.	24	perhaps, it could be clarified.		
25	Anyone else wishing	25	In the particular case that I have there		
	Page 22		Page 24		
1	DFEH DIRECTOR KISH: I just want to	1	is a business that purchased another business and		
2	respond to that. I think Miss Herrington's point is	2	when they made an asset purchase, which did not		
3	very well taken. The only thing I would add is that	3	obligate them to hire any of the employees, so all		
4	the office of administrative law is not on the same	4	the employees were terminated, and then they rehired		
5	page as you. So that limits us in terms of what we	5	essentially everyone, other than my client, who was		
6	can include as citations in, both, the initial and				
7		6	pregnant, and they're making the argument that they		
		6	pregnant, and they're making the argument that they are not subject to the regulation based on the		
8	final statement of reason. So to the extent you		are not subject to the regulation based on the		
8 9	final statement of reason. So to the extent you would like to see, I just want to emphasize it's not	7	are not subject to the regulation based on the argument, based on the language in the current		
	final statement of reason. So to the extent you would like to see, I just want to emphasize it's not the will of the councilmembers that we have citations	7 8	are not subject to the regulation based on the argument, based on the language in the current calendar year or preceding calendar year, and this		
9	final statement of reason. So to the extent you would like to see, I just want to emphasize it's not the will of the councilmembers that we have citations that are more spare than might be useful for	7 8 9	are not subject to the regulation based on the argument, based on the language in the current calendar year or preceding calendar year, and this may be a little bit difficult to illustrate, so I		
9 10 11	final statement of reason. So to the extent you would like to see, I just want to emphasize it's not the will of the councilmembers that we have citations that are more spare than might be useful for practitioners.	7 8 9 10	are not subject to the regulation based on the argument, based on the language in the current calendar year or preceding calendar year, and this may be a little bit difficult to illustrate, so I will try my best, but the company that bought the		
9 10 11 12	final statement of reason. So to the extent you would like to see, I just want to emphasize it's not the will of the councilmembers that we have citations that are more spare than might be useful for practitioners. CHAIR CHAYA MANDELBAUM: Thank you.	7 8 9 10 11	are not subject to the regulation based on the argument, based on the language in the current calendar year or preceding calendar year, and this may be a little bit difficult to illustrate, so I will try my best, but the company that bought the prior company created a new corporation in December		
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9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	final statement of reason. So to the extent you would like to see, I just want to emphasize it's not the will of the councilmembers that we have citations that are more spare than might be useful for practitioners. CHAIR CHAYA MANDELBAUM: Thank you. Important point to clarify. Anyone else wishing to provide testimony? Brian, any e-mails coming in about this? SPEAKER VERNOFF: So, provision that I wanted to bring attention is not specifically in the respect. CHAIR CHAYA MANDELBAUM: I'm sorry. Can you start by introducing yourself? SPEAKER VERNOFF: Raven Vernoff (phonetically). I represent plaintiffs in	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	are not subject to the regulation based on the argument, based on the language in the current calendar year or preceding calendar year, and this may be a little bit difficult to illustrate, so I will try my best, but the company that bought the prior company created a new corporation in December of 2014, so that company did not exist until December of 2014. They hired everyone, but my client in December of 2014. Now, if you look at the strict language of the regulations, they did not have five or more employees in the current, i.e., 2014 or preceding calendar year, 2013, because they did not exist until December of 2014. Technically it seems under the language they could be correct. Now, this is not a situation that is limited to this very specific circumstance, but, in		

7 (Pages 22 to 25)

1	at any time after August 15th.	1	discussed at the last meeting, we generally don't, if
2	CHAIR CHAYA MANDELBAUM: So one thing I'm	2	you have any big picture of things you would like to
3	aware of is this abnormality. This language comes	3	provide, certainly.
4	directly either from the statute or from Title 7, one	4	COUNCILMEMBER SCHUR: I just became aware
5	or the other. It's interpreted the same way in	5 that might be of interest to the committee, whi	
6	Title 7, and I agree with you that that can't be the	6	Councilmember Cisneros is shaking her head, areas
7	intent. What I would be curious to look at is case	7	which involves Arias v. Ramondo case, A-R-I-A-S
8	law, because I don't think that that exception makes		
9	•	9	versus Ramondo, R-A-M-O-N-D-O, came down on June 22nd from the Ninth Circuit. I don't have a cite or West
	sense, and I doubt that case law is interpreting it	10	
10	that way, but the language, itself, is not unique to these regulations. It's the way it's defined across	11	Law cite at the moment, and it involves harassment of
11	- ,	12	employees providing them, and actually arranging to
12	the board state and Federally.		get them deported by someone showing at a deposition,
13	SPEAKER VERNOFF: So I looked at all the	13	and it determined that the agent of the employer in
14	case law. There is not a California one on point.	14	this case, the lawyer, could the employer could be
15	There is unfortunately a Federal law case a	15	held accountable for that. It has a lot of good
16	Federal and Title 7 on point, which favors in	16	language in it, although it doesn't directly address
17	employer's position. So, it actually has been	17	the threatening to call immigration issue, but I
18	interpreted adversely to the position that I'm	18	would recommend that the committee read it as they're
19	advocating under Title 7. With respect to California	19	looking.
20	cases there is absolutely nothing.	20	CHAIR CHAYA MANDELBAUM: Thank you for
21	CHAIR CHAYA MANDELBAUM: Okay. I	21	calling that to our attention.
22	appreciate that, and thank you for calling it to our	22	And just those following along, the
23	attention.	23	subcommittee are Brodsky and I, so, we will go I
24	Just by way of procedural process, this	24	mean, we'll all receive all the comment that comes in
25	will fall outside, I think, of the notice rulemaking	25	by 5:00 p.m the written comment and have a
	Page 26		Page 28
1	with national origin discrimination. We have had	1	chance to read it. Councilmembers Brodsky and I will
2	various general employment regulations brought to our	2	review it all and provide an updated proposed draft
3	attention, so it will be on the Council's radar the	3	for the full Council to consider and provide comments
4	next time a rulemaking covering other parts of the	4	and vote on it at our next meeting.
5	regulations is considered.	5	COUNCILMEMBER IGLESIAS: Could I make a
6	SPEAKER VERNOFF: Thank you so much for	6	quick comment?
7	hearing me out.	7	One of the comments that came in asked
8	Have a great day. Thank you.	8	about whether reasonable accommodation applies here,
9	CHAIR CHAYA MANDELBAUM: Anyone else	9	and if so, I do think it merits some specification
10	wishing to provide testimony?	10	about how and when reasonable accommodation would
11	Seeing none and having checked the	11	apply in these cases, and then the situation, and
12	e-mail as well, we'll conclude. So thank you to		then also just, I think, there may be a typo on
13	those who provided public comment on the proposed	13	11028(f)(4), but it refers back to F, but I think it
$13 \\ 14$	regulations regarding national origin and	14	
$14 \\ 15$			really means E, and one, the height and weight
	discrimination. We'll accept written comments until	15	restrictions. It seems like that clause or provision
16	5:00 p.m., July 17th and with that, the hearing	16	should specifically refer to national origin in some
17	portion of our meeting is adjourned, and we can move	17	Way.
18	right along, I think, unless anyone I mean,	18	COUNCILMEMBER CISNEROS: National origin.
19	generally we don't do these.	19	CHAIR CHAYA MANDELBAUM: And some way.
20	This is the draft that was voted in and	20	COUNCILMEMBER CISNEROS: I have another
21	we're about to get a bunch of public comment that the	21	comment, too, for subsection (f), and subsection
22	subcommittee will consider and everyone will have a	22	(4)(a), and it talks about retaliation may include,
23	chance to digest and then the subcommittee will	23	but is not limited to, and then it's got a capital A
24	introduce a draft for the Council, but since the	24	that talks about threatening to call the immigration
25	version that's been provided is the same one we	25	authorities related to an employee and various family
1	Page 27		Page 29
1	1090 27		

8 (Pages 26 to 29)

1	members, and I was wondering about the extent to	
2	which the list might be, you know, too narrow in	
3	terms of not referencing step parents or great aunt	
4	or great uncles and immigrant families oftentimes	
5	have, you know, very large extended families, and so	
6	threatening retaliation against a family member like	
7	a great aunt or great uncle or a step parent could	
8	be, you know, a pretty powerful form of retaliation,	
9	but maybe how family members defined in this section	
10	may be too narrow.	
11	COUNCILMEMBER BRODSKY: What if we were	
12	to say something like includes, not limited to?	
13	COUNCILMEMBER CISNEROS: Yeah, something	
14	like that.	
15	COUNCILMEMBER BRODSKY: Something like	
16 17	that.	
18	CHAIR CHAYA MANDELBAUM: One thing I might comment from the statute.	
19		
20	000	
21		
22		
23		
24		
25		
	Page 30	
1		
1 2	STATE OF CALIFORNIA)	
3) SS. COUNTY OF SAN FRANCISCO)	
4	count of san honeiseo	
5	I, DEBRA L. ACEVEDO-RAMIREZ, hereby certify:	
6	That I am a Certified Shorthand Reporter of the	
7	State of California;	
8	That in pursuance of my duties as such, I	
9	attended the proceedings in the foregoing matter and	
10	reported all of the proceedings and testimony taken	
11 12	therein;	
13	That the foregoing is a full, true and correct transcript of my shorthand notes so taken.	
14	Dated: August 26, 2017	
15		
16		
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18		
1 0	DEBRA L. ACEVEDO-RAMIREZ, RPR, CSR 7692	
19 20	So all to	
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	DEBRA L. ACEVEDO-RAMIREZ, RPR, CSR 7692	
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July 17, 2017

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