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2	FAIR EMPLOYMENT AND HOUSING COUNCIL Meeting Notice and Agenda
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4	VII. Public Hearing: Proposed Employment Regulations Regarding Definitions; Harassment and Discrimination
5	Prevention and Correction; and Training.
б	Attachment B: Notice of Proposed Rulemaking
7	Attachment C: Initial Statement of Reasons
8	Attachment D: Proposed Employment Regulations Regarding
9	Definitions; Harassment and Discrimination Prevention and Correction; and Training
10	and correction, and righting
11	State Capitol
12	Room 127
13	Sacramento, CA 95814
14	Friday, August 17, 2018
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22	ATKINSON-BAKER, INC.
23	COURT REPORTERS (800) 288-3376
24	www.depo.com REPORTED BY: MICHELLE SAVAGE, CSR NO. 12957
25	FILE NO: AC085F1

1 APPEARANCES: CHAIRMAN CHAIRMAN CHAYA MANDELBAUM 1 respectively are also available. 2 COUNCIL MEMBER DARA SCHUR COUNCIL MEMBER LISA CISNEROS 2 The text of the proposed regulations is a available on the Council's web page and we're noticing or holding rather this hearing as par cOUNCIL MEMBER DALE BRODSKY 3 COUNCIL MEMBER DALE BRODSKY 5 the formal rulemaking process after publicly no the hearing more than 45 days ago in the Califi DIRECTOR KEVIN KISH 5 REGULATORY LEGISLATIVE COUNSEL BRIAN SPERBER 6 8 and also via e-mail sent to more than 7,500 inc and stakeholders that receive the department's NOAH LEBOWICZ 7 CHLOE HALL BILLINGSLEY NOAH LEBOWICZ 10 Pursuant to the notice, we are taking no cept written comments to the proposed regulations to the proposed regulations is a accept written comments is a accept written comments is a accept written comments is a accept written comments is a accept writte	t of ticing ornia .9, 2018 lividuals notices.
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NOAH LEBOWICZ 11 testimony on the proposed amendments, and we accept written comments to the proposed regulation 8 DENNIS SEATON 12 accept written comments to the proposed regulation	ve will also
8 DENNIS SEATON 12 destination of the proposed amendments, and v 9 12 accept written comments to the proposed regularity	ve will also
⁹ ¹² accept written comments to the proposed regu	
	lations
¹⁰ until 5:00 p.m. today, August 17th. You can e-	mail your
¹¹ written comments to fehcouncil@dfeh.ca.gov o	r if you
¹² 15 prefer you can mail them instead to the DEFH	
1316Brian Sperber at the DFEH's Los Angeles office	
14 15 17 at 320 West 4th Street, 10th Floor, Los Angeles	
¹⁶ ¹⁸ California 90013.	7
¹⁷ ¹⁹ If you brought a written copy of your co	mmente
18 20 and you do not plan an expanded with the set	
leaver in you don't have a hard copy available,	
23 remember to get it in today by 5:00.	
24 Anyone that testifies here today will reco	
²⁵ copies of any changes or amendments that Cou	uncil makes
Page 2	Page 4
	1.661
¹ Sacramento, California ¹ and will have an opportunity within a 15-day period	od to
Friday, August 17, 2018 ² make written comment regarding any changes that	
² 10:13 a.m 10:51 a.m. ³ to the draft text.	
³ CHAIRMAN CHAYA MANDELBAUM: We're ready for ⁴ The Council will consider each comment m	ade as
⁴ our public hearing. So we are on the record. And it is ⁵ well as all written comments received, and we wil	
⁵ around 10:15 on Friday, August 17th, and we are here at ⁶ respond to those comments in the final Statement	
 the State Capital in Sacramento. My name is Chaya Reasons which will become part of the Council's 	
7 Mandelbaum. I'm chair person of the Fair Employment and 8 rulemaking record.	
8 Housing Council, and joining mo are my colloquing on the	
9 Council Council Momboro Brodolog, Cobur, Jalogico and	
10 Ortiz along with Ex-Officio Mombor and Director of the	
11 Department Kevin Kich	
12 So even though we've made informal	
13 introductions let me again welcome you to the bearing	
¹⁴ slowly and mindfully of the transcription, and that	
¹⁵ public comment regarding the issuance of the amendments	
¹⁶ to the Fair Employment and Housing Council's employment	er, and
¹⁷ regulations, primarily relating to new legal provisions	
¹⁸ regarding definitions, harassment and discrimination	
¹⁹ Prevention and correction and the training requirements. ¹⁹ You will not be sworn in when you testify;	
²⁰ The proposed regulations are slated to appear ²⁰ however, we do ask that you come to the front of	the
²¹ in the California Code of Regulations, Title 2, Sections ²¹ room and speak into the microphone so that the c	ourt
 1108, 11023, and 11024. Copies of the proposed reporter can take down your testimony. Please be 	
 amendments to the FEHC regulations are available near stating and spelling your name and stating your 	- /
 the door and also online. Also, the notice and initial ²⁴ affiliation. 	
25 Statement of Reasons which are attachments B and C 25 Also, if you are commenting on a specific	
Page 3	Page 5

2 (Pages 2 to 5)

1	regulation, please identify the section and subsection	1	to track these individuals to potential one day, which	
2	number of the regulations so that we can refer to it	² we see as a drastic change, and that's our concern is		
3	while you speak. We will hear testimony until all those	3	that it will just lead to lack of clarity for employers	
4	wishing to testify today have had an opportunity to do	4	in this situation.	
5	so.	5	Moving on to the section regarding definition	
6	So with that, any volunteers for first	6	of employee, Section A 3, we are concerned that it's not	
7	comments? Anyone wishing to comment?	7	necessarily legally accurate. The definition of	
8	⁸ LAURA CURTIS: Hi, Good morning. This is		employee includes interns, volunteers, and individuals	
9	Laura Curtis. I'm with the California Chamber of	9	hired pursuant to a contract.	
10	Commerce and this is my first time attending.	10	And a big concern for us or for employers	
11	I just want to make sure that this is the	11	is the definition of intern, people pursuant hired	
12	comments for definitions regarding "training." Our	12	pursuant to a contract and volunteers. When these	
13	concerns are with the definition of "employee." Well,	¹³ individuals are properly categorized, they are not		
14	first let's start with the definition of "regular	14	technically employees. And in previous definitions in	
15	basis."	15	the regulations themselves, it says that independent	
16	Currently under and that is I can find	16	contractors are not included as employees.	
17	it for you. I don't know yeah, D 1 (a), stating that	17	So we see this as being contradictory, and	
18	regular basis means at least five employees regularly on	18	again will lead to further confusion for the employer	
19	the payroll.	19	community as to who exactly is included.	
20	And then prior to that D 1, regularly	20	And regardless of whether or not you want to	
21	employing, employing five or more individuals for any	21	include these individuals is not as much of a concern as	
22	part of the day, on which the unlawful conduct allegedly	22	defining them as employees.	
23	occurred.	23	And so, again, the definition here that	
24	So we see that as contradictory because you	24	interns, volunteers, and people pursuant to a contract	
25	have the unlawful conduct. You need five individuals	25	would be anywhere defined as an employee is concerning.	
	Page 6		Page 8	
1	employed on that day. But then additionally, later down	1	And that's it for us. Thank you so much.	
2	means at least five employees are regularly on the	2	CHAIRMAN CHAYA MANDELBAUM: Thank you.	
3	payroll. So even within their own its own	3	THE REPORTER: Can you state and spell your	
4	definition, we see that as being contradictory.	4	name again, please?	
5	And then also regular basis in general is	5	LAURA CURTIS: Of course. Laura Curtis,	
6	saying that they have to be employed regularly; where	6	L-A-U-R-A; last name's Curtis, C-U-R-T-I-S. I'm with	
7		7	the California Chamber of Commence. Thank you.	
8	currently under the regulations it's a 20-week period,	8		
9	which is in line with the federal definition of regular	9	CHAIRMAN CHAYA MANDELBAUM: Thank you, Ms.	
10	basis at 20-week period.	10	Curtis, and welcome. We hope you will be a regular face	
11	So without giving employers some sort of	11	at our meetings going forward.	
	specific guidelines for exactly what regular basis		A couple comments about that for the	
12	means, we see this as opening up the potential	12 13	subcommittee in terms of analyzing the comments so far,	
13	litigation around this issue; because you could have one	14	I think with respect to employees, I think substantively	
14	employee that is or one individual that is	14	everyone agrees that those types of classifications like	
15 16	technically employed or hired for New Year's Eve every	15	intern and apprentice or volunteer rather are covered	
	single year or you have someone that's been hired for		by the text. But I think it's a fair point to look at	
17	that comes on for Black Friday every year.	17 18	other ways of including them, even though we didn't mean	
18	Yes, it's routine, it's consistent, but that		to be addressing classifications specifically.	
19	shouldn't necessarily mean that it's a regular basis.	19	COUNCIL MEMBER DALE BRODSKY: Well, it does	
20	So you're going from potentially a 20-week period to the	20	say though at the introduction at the beginning for	
21 22	most drastic situation being one day.	21	purposes of this section.	
44		1 22		
	THE REPORTER: Sorry, sorry.	22	CHAIRMAN CHAYA MANDELBAUM: Right.	
23	THE REPORTER: Sorry, sorry. LAURA CURTIS: Slow down.	23	COUNCIL MEMBER DALE BRODSKY: So it is not	
23 24	THE REPORTER: Sorry, sorry. LAURA CURTIS: Slow down. So our concern is that you're going from a set	23 24	COUNCIL MEMBER DALE BRODSKY: So it is not creating a it's not saying necessarily that the	
23	THE REPORTER: Sorry, sorry. LAURA CURTIS: Slow down.	23	COUNCIL MEMBER DALE BRODSKY: So it is not	
23 24	THE REPORTER: Sorry, sorry. LAURA CURTIS: Slow down. So our concern is that you're going from a set	23 24	COUNCIL MEMBER DALE BRODSKY: So it is not creating a it's not saying necessarily that the	

3 (Pages 6 to 9)

 section. I do appreciate the comment and we will take to the form and take in reference to the upon structure of the April 4th meetion of a the April 4th meetion of the April 4th meetion in the April 4th meet					
 is exactly from the statute from 12940 11. ChAIRMAN CHAYA MANDELBAUM: Sure, sure, submitted on have persise in 11024. ChAIRMAN CHAYA MANDELBAUM: Sure, sure, submitted on have provided, which welly is to care built there's a less confusion yay to do it. The other point advectores some gamesmiship in terms of 20 consecutive weeks, and 1 think the Chamber would agree that an engineer, and it is a real life situation, who took the postion that they have 20 free employees, to have a free ride from antidiscrimination of the existing 20 calendar weaks or a percentage of them in existing. But there may be other ways of addressing that in terms of some combation of the existing. So another way to get it is just to consider, so a percentage of them in existing. COUNCLI MEMBER DALE BRODSKY: Well, I would have strong and indexisten. Suggest that you take a look at the initial Statement of some combine where this proposal comes from. And it was very well braight out. COUNCLI MEMBER DALE BRODSKY: Well, I trust that guidement. COUNCLI MEMBER DALE BRODSKY: Mell, I trust that guidement. COUNCLI MEMBER DALE BRODSKY: And las, I to a processor. And it was very well braight out. COUNCLI MEMBER DALE BRODSKY: And las, I to a processor and inconsidering the singer porting in adverse porting and the first sentence of D I it says use the dispictive "is some at the indigender of D I it says use the dispictive" is one which really exploring the some and inconsidering the advector is provide public comment? COUNCLI MEMBER DALE BRODSKY: And las, I to any to a singer to be insignated community with nearly explore and inconsidering the some and inconsidering the some at the engineer of D I it says use pent more an inconsidering the some and inconsidering the some and inconsidering the some at the engineer of D I ith says use pent more sone porting in adverse porting in adverse		section. I do appreciate the comment and we will take	¹ make mention of at the April 4th meeting to which I		
a Challman, Charta MandDELBAUE: Sure, sure, substantively its covered, but in terms of whether And our primary concerns 5 Tm going to skip b Challman, Charta MandDELBAUE: Sure, sure, substantively its covered, but in terms of whether And our primary concerns 5 Tm going to skip c regular basis that 1 think inglis the worth considering is I know we're trying to address some gamesmanship in regular basis that 1 think might be worth considering is I know we're trying to address some gamesmanship in regular basis that 1 think the Charben I conscitute weeks, and 1 think the Charben is student an employer, and this is a real life student on work trying to addressing that in terms of a some combination of the existing 20 callendar weeks or a percentage of time in existence. I haven't considered it fully ether, would be to say, work on so, for ome percentage of time in existence. So another way to got it is just to consider, In the 11024 or 24 (c), we propose - again, this stay, work of so ome percentage of the working is all submitted on addressing that near on considers, and it haven to consider before and I haven't considered it fully ether, would be to say, we believe the instaint/e training context with is sought to introduce the asses which and we will, of course, take it I haven't considered it fully ether, would be to say sust be the try out will of course, take it I haven't considered it fully ether, would be to <	2	it under advisement, but the wording that's used there			
5 substantively it's covered, but in terms of whether 6 there's elses confusion way to do it. 7 The other point about regularly employing on a 8 regular basis that 1 think might be worth considering is 9 I know weiter trying to address sone gamesmaship in 10 terms of 20 consecutive weeks, and 1 think the Chamber 10 weeks within which, were more than five 12 situation, who took the position that they have 20 free 13 game combination of the existince. 14 employees, to have a free ride from antidiscrimination 15 protection 1 think is not the intent of the statute. 16 there may be coher ways of addressing that in terms 16 and I haven't considered if fully etter, would be to 17 So another way to get It is just to consider, 18 and I haven't consider to fully etter, would be to 19 weekses that the employees, the base in existance. 10 the anotype have have to have the or the 24 weekse that the employees the base on existance. 25 or consider base on existance. 26 and I haven't consider base on existance. 27 or tha	3		3	qualifications and expertise in 11024.	
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The other point about regularly employing on a regular basis that 11 think might be worth considering is 1 know were truny to address some gamesmaship in terms of 20 consecutive weeks, and 1 think the Chamber would agree that a mejore, and this is a real life situation, who took the position that they have 20 free employees, to have a free ride from antidiscrimination of a percentage of them instance. 11024, the use of the term "secual harassment training" rather than as your amended regulations would suggest the employees, to have a free ride from antidiscrimination of the existing 20 calendar weeks or a percent to the statute. 10 But there may be other ways of addressing that in terms of some combination of the existence. 110 Weeks within which, vew one than five some thing that there is, in terms of the intent of the statute. 110 But there may be other ways of addressing that in terms of some combination of the existence. 110 Weeks that the employees has been in existence. 110 Weeks that the employees has been in existence. 110 Weeks that the employees has been in existence. 110 Weeks that the employees has been in existence. 110 Weeks that the employees has been in existence. 110 Weeks that the employees has been in existence. 110 Weeks that the employees has been in existence. 110 Weeks that the employees has been in existence. 110 Weeks that employees has been in existence.	5	substantively it's covered, but in terms of whether		over the procedural, which I'll leave that for the	
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 I know we're trying to address some gamesmanship in terms of 20 consecutive weeks, and it think the Chamber would agree that a employer, and this is a real life situation, who took the position that they have 20 free weeks within which, even though they have 20 free weeks within which, even though they have 20 free weeks within which, even though they have 20 free weeks within which even though they have 20 free weeks within which even ways of adressing that in terms of training, there is a lack of effectiveness to an extent, and I think rebranding to changing the name might be something that Council would like to consider before adoption. In the 11024 or 24 (c), we propose - again, this is all submitted in our connects, but we propose the indusion of substantive language should reflect the legislative intern around SB-36. Those of us that have berails and industry weeks that the employer has been in existence and/or 20, whichever is more protective, something that Council would like to consider before adoption. In the 11024 or 24 (c), we propose - again, this is all submitted in our connects, but we propose the working weeks that the employer has been in existence and/or 20, whichever is more protective, something that Council would tereflect the legislative intern around SB-36. Those of us that have to graph and in there protecting of the working to provide public comment? COUNCIL MEMBER DALE BRODSKY: Well, I rust that we well thought out. COUNCIL MEMBER DALE BRODSKY: And also, I do want to point out that in the first sentence of D 1 it says use the disjunctive "or" so - which I think covers the system of the meres, protective "or so - which I think covers the ophing protection. COUNCIL MEMBER DALE BRODSKY: And also, I do want to point out that in the first sentence of D 1 it says use the disjunctive "or" so - which I think covers the ophing of more prevention train are the parts to the first sentence of D 1 it says use the displacting "or on thing othere is	7	The other point about regularly employing on a	7	11024, the use of the term "sexual harassment training"	
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4 (Pages 10 to 13)

1	training and practical examples of harassment based upon	1	both the legislature, the executive office, and we would
2	gender identity, gender expression and sexual	2	gladly assist Council in flushing out any of that for
3			you.
4	provided by qualifying experts in harassment based upon	4	DIRECTOR KEVIN KISH: So Brian circulated to
5	gender identity, expression and sexual orientation.	5	us last night all of the comments that had come in
6	Those of us that have devoted us, we have	6	during this 45-day period up until then, and I don't
7	or devoted our lives to this, we have received numerous	7	think
8	complaints from multiple reports of individuals who have	8	CHLOE HALL BILLINGSLEY: No. And Brian has
9	engaged in this training with not necessarily the level	9	been informed. Yes, it will be submitted before the end
10	of expertise that we believe SB-396 intended to be	10	of today by 5:00 p.m.
11	disseminate.	11	
12		12	(Unreportable Crosstalk.)
13	Oftentimes, this is by practitioners that have	13	
14	been doing this on a regular basis but not necessarily	14	CHLOE HALL BILLINGSLEY: No.
15	been brought up to speed, and we believe that inclusion		COUNCIL MEMBER DALE BRODSKY: in the
16	of our voices in this is essential.	15	language that you were who was going to be included
	Those of us that I would never presume to	16	in your
17	assert my expertise on a subject matter that I am not	17	CHLOE HALL BILLINGSLEY: No. Actually it will
18	familiar, let alone relay my experiences of a community	18	be submitted by the 5:00 p.m. deadline. I apologize for
19	for which I'm not a member. And rather than permitting	19	the confusion, but you will receive it. Yes. Thank
20	those without said knowledge and expertise to take up	20	you.
21	the role and responsibility of relaying erroneous	21	All right. Did you receive my name and
22	LGBTQ-plus harassment prevention information, we urge	22	spelling accurately? Great. Thank you very much.
23	the Council to adopt regulations that would mandate our	23	CHAIRMAN CHAYA MANDELBAUM: Thank you. Anyone
24	voice included in this.	24	else wishing to provide comments as part of this
25	So thank you very much and yes.	25	hearing?
	Page 14		Page 16
			1 age 10
1	COUNCIL MEMBER DALE BRODSKY: Are you	1	NOAH LEBOWICZ: Good morning. Noah Lebowicz
2	proposing an addition to the 1-2-3 types of trainers?	2	on behalf of the California Employment Lawyers
3	CHLOE HALL BILLINGSLEY: I am actually, a	3	Association. Good morning. It's been a while. I
4	subdivision of this section that would specifically	4	really don't have much to say other than specifically
5	require the inclusion of the marginalized transgender	5	addressing the counting subsections, that we will not be
6	and non-binary individuals, you know, to disseminate	6	submitting any formal written comment to these
7	this.	7	regulations, but please do not take that as disinterest
8	I did propose, you know, in the proposed	8	or in any way a negative; in fact it's a positive. It
9	regulations or the proposed tax that I submitted in	9	means that we are very satisfied with these proposed
10		10	
11	my comments, it does classify it. It spells out how it	11	with this proposed language.
12	could be limited to a group of individuals that from	12	We think it addresses scenarios in a
13	special purpose benefit or nonprofit organization	13	thoughtful and coherent way that makes sense and that
14	representing those interests as the mechanism by which	14	provides a good deal of guidance. We all know those of
	authority can be gained, and we don't believe that it		us legislating in this field that the issue of counting
15 16	would cause any additional economic or physical	15 16	is a hotly litigated and repeatedly litigated issue, so
	responsibility on the part of employers or the State.		any guidance, frankly, is helpful. And this guidance,
17	DIRECTOR KEVIN KISH: Just a technical	17	in particular, we think is quite accurate and clear.
18	question. You submitted written comment before the last	18	So just a matter of public record to say that
19	hearing where this was introduced, correct?	19	we support this language and we'll, of course, wait for
20	CHLOE HALL BILLINGSLEY: No. I held off until	20	any further modifications to see if there's further
21	it was on the record, so it is submitted here.	21	comment necessary. Thank you.
22	DIRECTOR KEVIN KISH: It's submitted as of	22	CHAIRMAN CHAYA MANDELBAUM: Thank you.
23	today.	23	Any other public comments for this rulemaking?
24	CHLOE HALL BILLINGSLEY: Yes, yes, yes, yes,	24	Anything come in via e-mail.
25	yes, yes, and we are also obviously we have assisted	25	LEGISLATIVE COUNSEL BRIAN SPERBER: No.
	Page 15		Page 17
	rage 15		I age 17

5 (Pages 14 to 17)

1		1	turining and advantion is only for supervisory.	
2	CHAIRMAN CHAYA MANDELBAUM: All righty.	 training and education is only for supervisory employees: is that correct? 		
3	DIRECTOR KEVIN KISH: I just want to add a	3	employees; is that correct?	
4	clarification about where we are in the life cycle. I		COUNCIL MEMBER DALE BRODSKY: This is	
5	think that might be worth doing that more frequently at	4	consistent this is implementing the statute that	
6	our meetings because every regulatory puckage is at a		requires training for harassment. And so that's the	
7	different stage.		section by which we have just and maybe it does need	
	So for this one the Council voted this text,	7	to be clarified that, again, to say for purpose of this	
8	this proposed text into a formal rulemaking. This is	8	section, and/or maybe there is another way to say it,	
9	the hearing on the 45-day comment period, so get your		but that the are you referring specifically to	
10	comments in by the end of the day. The subcommittee	10	interns unpaid volunteers and persons under	
11	will take those comments, analyze them and we will	11	COUNCIL MEMBER TIM IGLESIAS: Well, yes. But	
12	return at a future meeting with either a proposed	¹² specifically what I'm asking that it sounds like		
13	modified draft or an unmodified draft with explanations	13	(Unreportable Crosstalk.)	
14	for the Council to then vote on another formal comment	14		
15	period.	15	COUNCIL MEMBER DALE BRODSKY: This is the	
16	So thanks to everyone who's already submitted	16	training that has to be done for supervisors.	
17	comments today. The subcommittee will come back in the	17	COUNCIL MEMBER TIM IGLESIAS: But for	
18	future with responses.	18	supervisors. So the definition of employees, I'm trying	
19	COUNCIL MEMBER DALE BRODSKY: Yes. And on	19	to figure out what the definition of employees is doing.	
20	behalf of Council Member Sisnaros I want to thank you	20	And in a sense, if they are employee so some of these	
21	for the comments. They are always very helpful.	21	volunteers might be supervisors?	
22	CHAIRMAN CHAYA MANDELBAUM: So thank you to	22	COUNCIL MEMBER JOSEPH ORTIZ: No, it's for	
23	all.	23	counting purposes, correct me if I'm wrong. So if you	
24	COUNCIL MEMBER TIM IGLESIAS: Is it	24	look at Section 6 on the same page, it says having 50 or	
25	appropriate for the Council members to comment or not, I	25	more employees, that's when they have to do that	
	Page 18		Page 20	
1	forgot, in this stage of the process?	1	training.	
2	CHAIRMAN CHAYA MANDELBAUM: Yes, absolutely.	2	COUNCIL MEMBER TIM IGLESIAS: Okay.	
3	COUNCIL MEMBER TIM IGLESIAS: Okay. I just	3	COUNCIL MEMBER JOSEPH ORTIZ: So for counting	
4	had a couple of quick things. So I understand I	4	purposes, it's logically consistent but it strains the	
5	think I understand the intention of the phrase "normal	5	plane reading. So I worry about non-attorneys taking a	
6	compliment," but I wonder if it would the public and	6	look at this because if I hadn't done the jumps around	
7	regulated community might benefit from some flushing out	7	it, as you pointed out, you look at "employees" and say,	
8	of what "normal compliment" means.	8	well, that's not consistent, and you also worry about,	
9	I really like the example in DB and if there	9	well, interns shouldn't be considered employees, unpaid	
10	is if it's possible to add more examples of	10	volunteers shouldn't be employees. And, in fact, my	
11	accounting given how complicated it is, some other maybe	11	initial thoughts when I read this was, I know many,	
12	common scenarios that are complicated that are resolved	12	especially non-profits, that are very small but may have	
13	under the regulations that might be helpful.	13	a one-time event where they have a huge number of unpaid	
14	In Section D 2, third line, it seems like	14	volunteers.	
15	there would have been an "and" between section	15	Well, that's really not going to trigger	
16	there's a string of sections cited. And it might be	16	because it's not going to trigger the 50 or more on a	
17	helpful to insert an "and" before the last one.	17	recurring basis, but it's not obvious I think to the	
18	•	18	average reader.	
I	And the last thing is I am a little confused	1 10	average reduct.	
19	And the last thing is I am a little confused about the issue of the definition of employee in the	19	COUNCIL MEMBER DALE BRODSKY: And I think	
19 20			-	
	about the issue of the definition of employee in the Section 11024. And my confusion is probably based on my	19	COUNCIL MEMBER DALE BRODSKY: And I think	
20	about the issue of the definition of employee in the	19 20	COUNCIL MEMBER DALE BRODSKY: And I think that's a fair criticism that we can take a look at and	
20 21	about the issue of the definition of employee in the Section 11024. And my confusion is probably based on my lack of understanding of this area of the law. It seems	19 20 21	COUNCIL MEMBER DALE BRODSKY: And I think that's a fair criticism that we can take a look at and see if there's a better way to articulate. We're really	
20 21 22	about the issue of the definition of employee in the Section 11024. And my confusion is probably based on my lack of understanding of this area of the law. It seems like that definition has to do with that section which	19 20 21 22	COUNCIL MEMBER DALE BRODSKY: And I think that's a fair criticism that we can take a look at and see if there's a better way to articulate. We're really trying for shorthand, you know, just to make sure that	
20 21 22 23	about the issue of the definition of employee in the Section 11024. And my confusion is probably based on my lack of understanding of this area of the law. It seems like that definition has to do with that section which is specifically regarding required training and	19 20 21 22 23	COUNCIL MEMBER DALE BRODSKY: And I think that's a fair criticism that we can take a look at and see if there's a better way to articulate. We're really trying for shorthand, you know, just to make sure that those groups which are included for harassment purposes,	
20 21 22 23 24	about the issue of the definition of employee in the Section 11024. And my confusion is probably based on my lack of understanding of this area of the law. It seems like that definition has to do with that section which is specifically regarding required training and education.	19 20 21 22 23 24	COUNCIL MEMBER DALE BRODSKY: And I think that's a fair criticism that we can take a look at and see if there's a better way to articulate. We're really trying for shorthand, you know, just to make sure that those groups which are included for harassment purposes, for training harassment purposes but are not necessarily	

6 (Pages 18 to 21)

1 2	employee would be you know, it would be clear that	 potential structural changes. So for those who are interested in this tonic 		
	they are part of this. So we can		So for those who are interested in this topic	
3	COUNCIL MEMBER DARA L. SCHUR: This is Dara.	3	outside of the regulations, please, you can find	
4	I would support that even if you just began this with	4	information on the department's website. We would love	
5	something that says for purposes of determining whether	5	your input in that process.	
6	there are 50 employees under X section.	6	COUNCIL MEMBER DALE BRODSKY: Well, if it	
7	COUNCIL MEMBER DALE BRODSKY: And also I think	7	would be and is it possible for the task force to	
8	the, you know, to come into play, it's not just for	8	also take a look at this and see if they can add to	
9	counting, I think. It's also for looking at what	9	this, you know, in a public comment?	
10	constitutes harassment substantively that you're doing	10	CHAIRMAN CHAYA MANDELBAUM: That's an	
11	training about. So, you know, I mean, if you're going	11	interesting idea, yeah.	
12	to use the word "employee," that's another context in	12	COUNCIL MEMBER DALE BRODSKY: That would be	
13	which it comes up. But I think we will look at that and	13	really helpful.	
14	see whether we can clarify to so that there's not a	14	COUNCIL MEMBER JOSEPH ORTIZ: And I'm	
15	confusion that we're not saying we're not saying that	15	wondering, maybe there was a comment about the training	
16	that is more generally an intern, for example, it's more	16	aspect LGBTQ-plus community and whether the	
17	generally considered an employee.	17	THE REPORTER: I'm sorry, I can't hear you.	
18	COUNCIL MEMBER TIM IGLESIAS: Thank you.	18	COUNCIL MEMBER JOSEPH ORTIZ: I'm sorry. I	
19	COUNCIL MEMBER DARA L. SCHUR: I also think	19	was wondering if the task force might be able to take a	
20	it's really helpful to take another look at who can be	20	look at the training aspect for the LGBTQ community and	
21	trainers in terms of people that lived experience around	21	make sure, perhaps provide some guidance on that	
22	a variety of protected classes, whether it's non-profits	22	training.	
23	or people who have a record of involvement, but I think	23	COUNCIL MEMBER DARA L. SCHUR: And let me just	
24	it is very important for the experience. I've sat	24	say that not in the training context, but another	
25	through many a sexual harassment training that really	25	capacity there is precedent and statute for recognizing	
	Page 22		Page 24	
1	was not helpful because people didn't understand some of	1	pure advocates and people with lived experiences of a	
2	these issues.	2	valued component of a program. Certainly that is	
2 3	these issues. So if there is a way to broaden this or	2 3	valued component of a program. Certainly that is recognized in the mental health community where people	
2 3 4	these issues. So if there is a way to broaden this or incorporate it or think about that, I would strongly	2 3 4	valued component of a program. Certainly that is recognized in the mental health community where people who have lived experience or our peers are often part of	
2 3 4 5	these issues. So if there is a way to broaden this or incorporate it or think about that, I would strongly support that suggestion.	2 3 4 5	valued component of a program. Certainly that is recognized in the mental health community where people who have lived experience or our peers are often part of it, so maybe there is an analogy there that we can draw	
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1	encourage that when you make your proposals.	¹ CHAIRMAN CHAYA MANDELBAUM: Thank you.			
2	COUNCIL MEMBER DARA L. SCHUR: May I ask a	² DIRECTOR KEVIN KISH: I just want to weigh in			
3	question of the last speaker just really quickly because	³ briefly and I've said this before, and you can hear it			
4	I didn't quite understand one of your comments.	⁴ again, which is that the Sexual Harassment Prevention			
5	Yes, please.	⁵ Training that's been mandated now for more than ten			
6	You said something about renaming it or	⁶ years in California has very technical requirements in			
7	rebranding it. I wasn't quite sure what you are	⁷ the statute that the legislature has put in, including			
8	proposing.	⁸ requirements to train people about issues that don't			
9	CHLOE HALL BILLINGSLEY: That was in reference	⁹ have anything to do with sexual harassment, necessarily.			
10	to we were actually suggesting that we keep the name	¹⁰ Things like workplace bullying.			
11	"sexual harassment prevention training" and the	¹¹ One of the things that the Sexual Harassment			
12	references to "sexual harassment." The purpose of	¹² Prevention Task Force has been looking at is the extent			
13	SB-396 wasn't to rename the training itself. It was to	¹³ to which the legislative requirements actually reflect			
14	incorporate this concept of LGBTQ-plus harassment that	¹⁴ social science about the best type of training, and the			
15	is extremely prevalent into the training itself. So	¹⁵ EEOC has done a lot of work on this with their Workplace			
16	that was aside from the peer training aspect or the	¹⁶ Harassment Prevention Task Force, including summarizing			
17	consideration.	¹⁷ the social science on this and including putting			
18	And in our proposed we do actually both attend	¹⁸ together what they call the "Respectful Workplaces			
19	to both the logistical concerns as well as the peer	¹⁹ Training," which is not specifically focused on sexual			
20	training considerations that were brought up in the	 ²⁰ harassment but takes into account the social science 			
21	April 4th meeting as well as today. So we hope that you	hardssment but takes into decount the social science			
22					
23	will take a look at our language.	Nonplace during the lo interface to prevent			
23	And we personally believe that there is a lot	hardsomene of an eypeon			
25	of legislation coming about. However, none of it's				
20	really touching on the substantive. And we believe that	²⁵ the legislature ultimately to look at some of that and			
	Page 26	Page 28			
1	that's kind of the responsibility of the Council to	¹ perhaps actually remove some of the specifics that are			
2	interpret those statutes because with additional	² now required in the training that limit the ability of			
3	legislation that keeps adding or in the case of, I	³ employers to provide training that might actually be			
4	believe it's SB-1343, Senator Mitchell's bill would	⁴ more responsive to the particular needs of given			
5	actually extend this to include employees, we believe	⁵ industry, a given workplace, a given employee			
6	that this is the optimal time to really consider the	⁶ population.			
7	intent of both our marginalized community, and as	⁷ One of the things that we do know is that			
8	Council Member Schur said that the marginalized	⁸ training that is not targeted towards the industry or			
9	communities that essentially the civil rights	⁹ the specific workplace is less effective, and so there			
10	legislative bills we're done to serve.	¹⁰ are initiatives. There was a bill that requires a			
11	COUNCIL MEMBER DARA L. SCHUR: And does your	¹¹ working group that DFEH is a part of to think about			
12	letter reference the pending legislation that's still	¹² sexual harassment training for the janitorial industry.			
13	active, have bearing on this?	¹³ There's legislation pending that would have us do the			
14	CHLOE HALL BILLINGSLEY: I have yeah, would	¹⁴ same for the construction industry.			
15	the Council prefer it referenced depending legislation?	¹⁵ So there's a lot of movement around this, but			
16	COUNCIL MEMBER DARA L. SCHUR: I think it	¹⁶ the overarching statutory scheme is one size fits all as			
17	might be helpful.	¹⁷ of right now in California.			
18	CHLOE HALL BILLINGSLEY: Then, yes, it does	¹⁸ CHAIRMAN CHAYA MANDELBAUM: Thank you. And			
19	or it shall. I was teetering on that. So thank you for	¹⁹ thank you for those who took time to provide public			
20	that consideration and guidance. And we believe also as	²⁰ comments today regarding the issuance of the DFEH. Do			
21	well with the announcement and congratulations on the \$3	²¹ you have some additional upon comments?			
22	million outreach fund. We believe that that's	²² DENNIS SEATON: I have just one.			
23	substantial and we'd definitely like to have a voice on	²³ CHAIRMAN CHAYA MANDELBAUM: Okay. Can you			
24	how that is spent. So, again, if there is any other	²⁴ come say it there so people can follow long and it gets			
25	questions for me, otherwise, thank you again.	²⁵ into the rulemaking record.			
	Page 27	Page 29			
B		ain an			

8 (Pages 26 to 29)

1	DENNIS SEATON: My name is Dennis Ceton. I'm	1	
2	the Government Relations Director for the Church State	2	REPORTER'S CERTIFICATE
3	Council. Our executive director can't be here today but	3	
4	he has given public comment before.	4	
5	THE REPORTER: I can't hear you.	5	I, Michelle Savage, CSR No. 12957, Certified
6	DENNIS SEATON: Oh, you can't hear me? Oh,	6	Shorthand Reporter, certify;
7	my. Can you please tell my wife that?	7	That the foregoing meeting was then taken
8	CHAIRMAN CHAYA MANDELBAUM: Just to clarify,	8	before me at the time and place therein set forth; that
9	we will later be talking about the religious the	9	the meeting was reported stenographically by me and
10	draft religious regs. Do you have comments related to	10	later transcribed into typewriting under my direction;
11	these other regs that we're discussing now or are your	11	that the foregoing is a true record of the meeting taken
12	comments targeted to the religious	12 13	at that time.
13	DENNIS SEATON: I have a specific I just	14	I further certify that I am not a relative or
14	want to thank you, so it applies to now and later.	15	employee of any attorney of the parties, not financially
15	CHAIRMAN CHAYA MANDELBAUM: We'll take that.	16	interested in the meeting.
16	DENNIS SEATON: We appreciate what each one of	17	I declare under penalty of perjury under the
17	you do each and every day helping what goes on here with	18	laws of California that the foregoing is true and
18	employees and employers in the State of California. And	19	correct.
19	the regulation that we were interested in that has to do	20	Dated this 23rd day of Augure 2008.
20	with how employees are screened out, so that may be	21	Dated this 25rd day of Augury, 20th.
21	coming up. But we just wanted to say thank you and now	22	The same
22	I've gotten it in early.		MICHELLE SAVAGE, C.S.R. NO. 12957
23	CHAIRMAN CHAYA MANDELBAUM: Perfect. Well, we	23	
24	hope to hear more from you or the Church State Council	24	
25	as our draft regulations we're going to discuss this	25	
	Page 30		Page 32
1	afternoon on Religious Creed Discrimination comes up.		
2	DENNIS SEATON: Thank you very much.		
3	CHAIRMAN CHAYA MANDELBAUM: So thanks again to		
4	those who participated in our formal rulemaking hearing.		
5	We will accept written comments regarding these		
6	regulations until 5:00 p.m. today so please remember to		
7	get them in and to amend them as subtly encouraged by		
8	council numbers.		
9	With that we will relieve the court reporter		
10	of her duties and thank you very much. And the formal		
11	public hearing portion of our meeting is adjourned.		
12	(The hearing was adjourned at 10:51 a.m.)		
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