



## Civil Rights Department Civil Rights Council

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711  
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### CIVIL RIGHTS COUNCIL (CRD)

Meeting of August 10, 2022

#### Minutes

**Elihu Harris State Building  
1515 Clay St.  
Conference Room 11, Second Floor  
Oakland, CA 94612**

**Members of the public joined in person at the physical location above or joined remotely using the following remote meeting information:**

**<https://us02web.zoom.us/j/83371278666>  
and/or  
1-669-900-6833 and Meeting ID: 83371278666**

#### Councilmembers Present

Gabriel Sandoval, Chairperson  
Dale Brodsky, Councilmember  
Hellen Hong, Councilmember  
Tim Iglesias, Councilmember  
Adetunji O. Olude, Councilmember  
Dara Schur, Councilmember  
Julie Wilensky, Councilmember

#### Civil Rights Department Staff Present

Adam Romero, CRD Deputy Director of Executive Programs  
Becky Monroe, CRD Deputy Director of Strategic Initiatives and External Affairs (participating virtually)  
Rachael Langston, CRD Senior Legislative and Regulatory Counsel  
Mariel Block, CRD Senior Legislative and Regulatory Counsel

#### Others Present

An estimated 40 members of the public participated either in person or virtually.

#### **I. Call to Order and Roll Call**

Chair Sandoval welcomed guests to the Civil Rights Council's 48th meeting and called it to order. He then turned the meeting over to CRD Legislative and Regulatory Counsel, Rachael Langston, who conducted roll call.

#### **II. Welcome and Introduction of Guests**



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Chair Sandoval welcomed members of the public and announced that the Council meeting would be livestreamed on the Council's website via Zoom and that the recording would be available on the Council's website and YouTube channel. Members of the public were afforded the opportunity to participate in the meeting by emailing the Council, using the Zoom chat feature, and/or using the zoom "raise hand" function. Members of the public were also able to access the meeting agenda and attachments on the Council's website.

Chair Sandoval then acknowledged CRD leaders and other members in attendance, including Adam Romero, CRD Deputy Director of Executive Programs, Rachael Langston, Senior CRD Counsel, Mariel Block, Senior CRD Counsel, and Becky Monroe, CRD Deputy Director of Strategic Initiatives and External Affairs.

### III. Review of the Agenda

Chair Sandoval reviewed the agenda for the meeting, which included:

1. A Civil Rights Department Report
2. A Public Hearing: Proposed Modifications to Employment Regulations Regarding Criminal History
3. Consideration of Proposed Modifications to Employment Regulations Relating to Religious Creed Discrimination and Accommodations
4. The Consideration of Proposed Modifications to Fair Employment and Housing Act Housing Regulations
5. The Consideration of Proposed Modifications to Fair Employment and Housing Act Employment Regulations Regarding Automated Decision Systems
6. An Update from the Council's other Subcommittees

### IV. Approval of the Minutes

#### Attachment A: Minutes from March 25, 2022, Meeting of the Civil Rights Council

Chair Sandoval reviewed the minutes of the March 25, 2022, meeting. During the March 25th meeting, the Council held a public workshop and reviewed the working draft of employment regulations regarding automated-decision systems and heard updates from the Council's other subcommittees.

Chair Sandoval asked for edits, amendments, and public comments on the minutes and received none. Councilmember Iglesias moved and Councilmember Schur seconded the motion to approve the minutes. The Council voted to approve the minutes unanimously.

### V. Councilmembers' Reports

Chair Gabriel Sandoval and Councilmembers

No reports.

### VI. Civil Rights Department Report

Adam Romero, Deputy Director of Executive Programs, Civil Rights Department



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Becky Monroe, Deputy Director of Strategic Initiatives and External Affairs, Civil Rights Department

Deputy Director Romero announced that, effective July 1, 2022, the state legislature approved renaming the Department of Fair Employment and Housing to the Civil Rights Department. The Fair Employment and Housing Council was concurrently renamed the Civil Rights Council. Deputy Director Romero explained that CRD's website and materials would be updated to reflect the name change. He described the CRD's plans to launch a public education campaign to reintroduce the CRD to Californians over the next year. Deputy Director Romero updated the Council on recent litigation and settlements. He announced the hiring of CRD's new Assistant Deputy Director for Education and Outreach, Lily Harvey.

Deputy Director Monroe gave an update regarding the CRD's work combatting hate violence and announced the anticipated launch of the hotline this fall.

### **VII. Public Hearing: Proposed Modifications to Employment Regulations Regarding Criminal History**

Attachment B: Notice of Proposed Rulemaking

Attachment C: Initial Statement of Reasons

Attachment D: Proposed Modifications to Employment Regulations Regarding Criminal History

#### A. Discussion by Council

Chair Sandoval highlighted the ground rules for the public hearing and gave background information regarding the proposed modifications to employment regulations regarding criminal history.

Councilmember Iglesias suggested several formatting and grammatical changes.

Councilmember Schur suggested omitting references to Department materials because of frequent changes and suggested clarifying the text regarding the "burden of proof."

Councilmember Wilensky clarified that the Council was only receiving comments from the Councilmembers and members of the public with regard to the proposed regulations during the meeting.

#### B. Public Comment

**Sandra Johnson, Legal Aid at Work, Fair Chance Community Organizer:** Johnson thanked the Councilmembers for their work on the Fair Chance regulations and highlighted the importance of employment for people who have been formerly incarcerated. Among other suggestions, Johnson asked the Council to consider adopting language clarifying the direct and adverse relationship standard, including language that ensures that employers cannot make generalized, unsupported determinations. Johnson also asked the Council to adopt language establishing a rebuttable presumption that an applicant who has completed a sentence and is free from custody does not pose a substantial risk to public safety.

**Molly Lao, Skadden Fellow, Legal Aid at Work:** Lao stated that they are encouraged by the Council's addition





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of mitigating or rehabilitative evidence in subsections (c)(2), (D)(1) and (D)(2), but they are concerned that employers may require applicants to submit such evidence and use an applicant's failure to disclose such mitigation or rehabilitative evidence as a justification for job revocation. Among other proposed changes, Legal Aid at Work proposed language clarifying that evidence of rehabilitation, mitigating circumstances such as survivor or disability status and comparable statuses, or other documentary evidence such as police reports is optional and may only be voluntarily provided by the applicant. Lao suggested that the Council should consider adopting language in the introduction about the positive relationship between hiring persons with arrest and conviction records and the success of the business, or in subsection (C)(1) or (C)(3). Lao advanced the view that the Council should presume that there is no direct and adverse relationship where a licensing, regulatory, or government entity has determined that an individual may perform the job.

**Noah Lebowitz, Sole Practitioner, Chair of Fair and Employment and Housing Council Regulations Committee, California Employment Lawyer's Association:** Lebowitz proposed to include in-custody programs in the non-exhaustive lists in subsections (i) and (ii). Regarding the new subsection (h) that deals with employers who are seeking to benefit from the federal Work Opportunity Tax Credit, Lebowitz voiced concern with the amount of detail and documentation in the Department of Labor form. Lebowitz asked the Council to consider adding language instructing or advising employers that they need to keep these individuals' information separate, segregated, and confidential from their general personnel files, similar to how medical information is handled.

**Merve Hickok, Founder of aiethicist.org:** Hickok voiced concern regarding the possibility of employers conducting research on an applicant or employee through general web searches, rather than specific inquiries into criminal history. In addition, Hickok raised concerns regarding social media background check vendors, due to the fact that such vendors could access information about an applicant and/or create a report or score regarding an applicant, without the employer itself directly inquiring about this information. Hickok expressed that this could be a loophole in the protections.

**Beth Avery, Senior Attorney at National Employment Law Project:** Among other suggestions, Avery suggested that the proposed regulations make explicit that applicants cannot be penalized for denying they have a criminal record when they are asked to provide such information in contravention to the law. Avery noted that it is difficult for applicants to know whether they are improperly being asked for criminal history information or whether they are being asked for the information pursuant to a lawful exception. Avery suggested that employers be required to expressly state that they are asking about criminal history information pursuant to an exception or cite the legal authority under which they are asking about the applicant's record. Avery also suggested language expressly stating that if a record was known about at the time an individual was hired, promoted, or transferred, the same individual cannot be terminated or have any other adverse action taken subsequently based on that record.

### C. Action by Council

Chair Sandoval closed the public hearing at 2:01 PM, and acknowledged that the Council will be reviewing all submitted public comments.



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### VIII. Consideration of Proposed Modifications to Employment Regulations Relating to Religious Creed Discrimination and Accommodations

Councilmembers Dale Brodsky and Julie Wilensky

#### Attachment E: Proposed Modifications to Employment Regulations Relating to Religious Creed Discrimination and Accommodations

##### A. Discussion by Council

Councilmember Brodsky highlighted Attachment E and stated that Councilmember Wilensky and she were seeking approval to move the proposed modifications into formal rulemaking whereby public comment would be sought regarding the same. The proposed modifications stated that an accommodation that requires segregation of an employee from other employees, customers, or the general public is not reasonable, unless the accommodation is expressly requested by an applicant or employee, or an employee's close proximity to others would impose an undue hardship by endangering the health and safety of the employee or others. Councilmember Brodsky then explained types of potential accommodations. Councilmember Brodsky also noted that this was a first draft in anticipation of public comment.

Councilmember Iglesias suggested some sentence restructuring and grammatical changes for clarity and readability.

Councilmember Schur voiced concern with including the employee in terms of endangering the health and safety of the employee. She expressed that the "undue burden" standard usually means burden and hardship to the employer and not to the person with the disability or other employees. Councilmembers Schur and Hong expressed concern with adding unpaid leave as an example of an accommodation within the regulations.

Councilmember Wilensky shared an example from the EEOC guidance.

##### B. Public Comment

**Noah Lebowitz, Sole Practitioner, Chair of Fair and Employment and Housing Council Regulations Committee, California Employment Lawyer's Association:** Lebowitz voiced concern for the proposal as a whole. He recommended that the Council not adopt the proposed modifications at this time. As an alternative, Lebowitz recommended that a letter be drafted to the Legislature asking it to approach this issue as a potential amendment to the appropriate section of 12940.

**Ashley Hoffman, California Chamber of Commerce:** Hoffman noted that although there is hesitation to include unpaid leave as an accommodation, she believes it should be added so that there is an extensive list for employers.

**Tiffany Vitel:** Vitel voiced agreement with the idea that the proposed modifications should be addressed through legislation.



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### C. Action by Council

None.

## IX. **Consideration of Proposed Modifications to Fair Employment and Housing Act Housing Regulations**

Councilmembers Dara Schur and Tim Iglesias

### Attachment F: Proposed Modifications to Fair Employment and Housing Act Housing Regulations

#### A. Discussion by Council

Councilmember Iglesias highlighted that they are seeking Council approval to initiate the formal rulemaking process with regard to the proposed regulations. Councilmember Iglesias explained that the proposed revisions are offered to provide more clarity to the fair housing regulation. Councilmember Iglesias highlighted that the Subcommittee added a new section, section 12140.1, regarding source of income discrimination in housing other than rental housing.

#### B. Public Comment

**Kareem Drisi, California Association of Realtors:** Drisi expressed concern that under subdivision a, paragraph 7, the qualification is not contained in the rule, which could cause confusion in the marketplace.

#### C. Action by Council

Councilmember Hong moved to initiate the formal rulemaking process, Councilmember Brodsky seconded the motion, and the Council unanimously approved a motion to initiate the rulemaking process.

## X. **Consideration of Fair Employment and Housing Act Employment Regulations Regarding Automated Decision Systems**

Councilmembers Time Iglesias and Hellen Hong

### Attachment G: Proposed Modifications to Fair Employment and Housing Act Employment Regulations Regarding Automated Decision Systems

#### A. Discussion by Council

Councilmember Iglesias noted that the Subcommittee is introducing the proposed regulations with the request that the Council move them into the formal rulemaking process. Councilmember Iglesias highlighted certain changes: the addition of definitions; the revision of definitions based on EEOC guidance; and the reorganization of some definitions under the definition of automated-decision system to add clarity.





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Councilmember Brodsky suggested reorganizing some of the sections for clarity. She voiced concern about the use and validity of personality-based questions pre-offer versus post-offer.

Councilmember Schur suggested some formatting and sentence restructuring revisions and grammatical changes for clarity.

B. Public Comment

None.

C. Action by Council

After amending the definition of “agent,” Councilmember Schur moved, Councilmember Wilensky seconded, and the Council unanimously approved a motion to initiate the formal rulemaking process.

### **XI. Update from the Reasonable Accommodations for Associational Disabilities Subcommittee** Councilmembers Dale Brodsky and Adetunji Olude

A. Discussion by Council

Councilmember Olude stated the subcommittee has no updates.

B. Public Comment

**Noah Lebowitz, Chair of Fair and Employment and Housing Council Regulations Committee, California Employment Lawyer’s Association:** Lebowitz urged the Council to do whatever it can to move forward with these regulations.

### **XII. Update from the Criminal History & Employment Regulations Subcommittee** Chair Gabriel Sandoval and Councilmember Julie Wilensky

A. Discussion by Council

Councilmember Wilensky stated that the subcommittee had no further updates.

B. Public Comment

None.

### **XIII. Update from Government Code Section 11135 Regulations Subcommittee** Councilmembers Dale Brodsky and Dara Schur



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### A. Discussion by Council

Councilmember Schur stated the subcommittee had no updates.

### B. Public Comment

None.

## XIV. Update from Hate Violence Subcommittee

Chair Gabriel Sandoval and Councilmember Dale Brodsky

### A. Discussion by Council

Chair Sandoval stated that Councilmember Brodsky and he met with stakeholders focused on combatting hate violence/incidents. Chair Sandoval, Councilmember Brodsky, and Becky Monroe have been meeting with stakeholders regarding relevant proposed legislation and related matters

### B. Public Comment

None.

## XV. Update from the Algorithms and Bias Hearing Subcommittee

Councilmembers Tim Iglesias and Hellen Hong

### A. Discussion by Council

Councilmember Iglesias stated that the subcommittee had no further updates.

### B. Public Comment

None.

## XVI. Update from the Housing Regulations Review Subcommittee

Councilmembers Dara Schur and Tim Iglesias

### A. Discussion by Council

Councilmember Iglesias stated that the subcommittee had no further updates.

### B. Public Comment

None.





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### **XVII. Update from the Real Estate Lending and Restrictive Covenants Subcommittee** Councilmembers Tim Iglesias and Hellen Hong

#### A. Discussion by Council

Councilmember Hong stated that they have decided to put this subcommittee on hold for now to focus on other the Council/CRD regulatory and non-regulatory matters

#### B. Public Comment

None.

### **XVIII. Update from the Unruh Act Subcommittee** Councilmembers Adetunji Olude and Julie Wilensky

#### A. Discussion by Council

Councilmember Olude stated that the subcommittee is still in the analysis and discussion process.

#### B. Public Comment

None.

### **XIX. Update from the Community Education and Outreach Subcommittee** Chair Gabriel Sandoval and Councilmember Hellen Hong

#### A. Discussion by Council

Chair Sandoval stated that the subcommittee has met with CRD staff to discuss how the Council generally and its members individually can better engage with the community to advance the knowledge, exercise, and protection of civil rights.

Councilmember Hong stated that they are trying to ensure alignment between the Council's priorities and CRD's outreach plan.

#### B. Public Comment

None.

### **XX. Discussion Regarding Additional Subcommittee Assignments** Chair Gabriel Sandoval and Councilmembers



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### A. Discussion by Council

There were no Council comments.

### B. Public Comment

None.

### C. Action by Council

## **XXI. Further Public Comment**

None.

## **XXII. Adjournment**

Chair Sandoval adjourned the meeting at approximately 3:58 PM.

Date: August 10, 2022

GABRIEL SANDOVAL  
Chair

Taylor Whitley  
CRD Outreach and Education Office Technician