

Civil Rights Council
Proposed Changes without Regulatory Effect to California Code of Regulations, Title 2, Division 4.1, Chapter 5 to Reflect Department Name Change; Addition of Reproductive Health Decisionmaking as a Protected Characteristic; and Addition of Designated Person to the California Family Rights Act Regulations (2 CCR Sections 11000, et. seq.)

CALIFORNIA CODE OF REGULATIONS
Title 2. Administration
Div. 4.1. ~~Civil Rights Department of Fair Employment & Housing~~

Chapter 5. ~~Fair Employment & Housing~~Civil Rights Council

Subchapter 1. Administration

Article 1. Administration

§ 11002. Definitions.

Unless a different meaning clearly applies from the context, the meaning of the words and phrases as defined in this section shall apply throughout this chapter:

- (a) “~~Council~~” or ~~FEHC~~“CRC” means the State ~~Fair Employment and Housing~~Civil Rights Council created by section 12903 of the Government Code pursuant to Senate Bill 1038 (2011-2012 Reg. Sess.) (State. 2012, ~~Ch. 46~~) and renamed pursuant to Senate Bill 189 (2021-2022 Reg. Sess.) (Stat. 2022, Ch. 48).
- (b) “~~Department~~” or ~~DFEH~~“CRD” means the Civil Rights Department of Fair Employment and Housing created by section 12901 of the Government Code pursuant to the Governor’s Reorganization Plan No. 1 (1980).
- (c) “Person” includes one or more individuals, partnerships, associations or corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.
- (d) “Complainant” means the person who files a timely, verified complaint with the ~~DFEH~~CRD alleging grievement by an unlawful practice.
- (e) “Respondent” means the person who is alleged to have committed an unlawful practice in a complaint filed with the ~~DFEH~~CRD.
- (f) “Act” means the California Fair Employment and Housing Act, created by Government Code section 12900.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12903 and 12925, Government Code.

Subchapter 2. Discrimination in Employment

Article 1. General Matters

§ 11005. ~~Fair Employment and Housing~~Civil Rights Council - Conflict of Interest Code.

The Political Reform Act (Gov. Code § 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (Cal. Code Regs., tit. 2., § 18730), which contains the terms of a standard conflict of interest code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of California Code of Regulations, title 2, section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached appendix in which officials and employees are designated and disclosure categories are set forth, constitute the conflict of interest code of the ~~Fair Employment and Housing~~Civil Rights Council.

Designated employees shall file statements of economic interests with their agency. Upon receipt of the statements of the Council members, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. The statements for all other designated positions shall be retained with the agency and made available for public inspection and reproduction upon request. (Gov. Code, § 81008.)

Appendix A

<i>Designated Positions</i>	<i>Disclosure Category</i>
Council Members	1
Consultants ¹	1

¹ With respect to Consultants, the Chairperson may determine in writing that a particular consultant is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in these categories. Such determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The Chairperson’s determination is a public record and shall be retained for public inspection at offices of the ~~Fair Employment and Housing~~Civil Rights Council. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

Appendix B

General Provisions

When a designated employee is required to disclose investments and sources of income, he or she need only disclose investments in business entities and sources of income that do business in the jurisdiction, plan to do business in the jurisdiction or have done business in the jurisdiction within the past two years. In addition to other activities, a business entity is doing business within the jurisdiction if it owns real property within the jurisdiction. When a designated employee is required to disclose interests in real property, he/she need only disclose real property that is located in whole or in part within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the ~~Fair Employment and Housing~~Civil Rights Council.

Designated employees shall disclose their financial interests pursuant to the appropriate disclosure category as indicated in appendix A.

Disclosure Categories

Category 1

Designated officials and employees assigned to this disclosure category must report all investments and business positions in business entities, sources of income and interests in real property.

Category 2

Designated officials and employees assigned to this disclosure category must report investments and business positions in business entities and sources of income of the type which within the past two years have contracted to provide services, supplies, materials or equipment to the Department.

Note: ~~Authority cited and Reference: Section 81000 et seq., Government Code.~~Authority cited: Section 87300, Government Code. Reference: sections 87300, 87302, and 87306, Government Code.

§ 11006. Statement of Policy and Purpose.

The public policy of the State of California is to protect and safeguard the civil rights of all individuals to seek, have access to, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, sexual orientation, reproductive health decisionmaking, or military and veteran status, ~~and sexual orientation~~. Employment practices should treat all individuals equally, evaluating each on the basis of individual skills, knowledge and abilities and not on the basis of characteristics generally attributed to a group enumerated in the Act. The objectives of the California Fair Employment and Housing Act and these regulations are to promote equal employment opportunity and to assist all persons in

understanding their rights, duties and obligations, so as to facilitate achievement of voluntary compliance with the law.

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920 and 12921(a), Government Code.

§ 11007. Authority.

The ~~FEHCCRC~~ issues these regulations under the authority vested in the Council by the Fair Employment and Housing Act, specifically Government Code section 12935(a).

Note: Authority cited: Section 12935(a), Government Code. Reference: ~~Part 2.8 of Division 3 of Title 2~~Section 12935(a), Government Code.

§ 11013. Recordkeeping.

Employers and other covered entities are required to maintain certain relevant records of personnel actions. Each employer or other covered entity subject to this section shall retain at all times at each reporting unit, or at company or divisional headquarters, a copy of the most recent California Employer Information Report (CEIR) or appropriate substitute and applicant identification records for each such unit and shall make them available upon request to any officer, agent, or employee of the Council or Department.

(a) California Employer Information Report. All employers regularly employing one hundred or more employees, apprenticeship programs with five or more apprentices and at least one sponsoring employer with 25 or more employees and at least one sponsoring union, which operates a hiring hall or has 25 or more members, and labor organizations with 100 or more members shall prepare an annual CEIR in conformity with guidelines on reporting issued by the Department.

(1) Substituting Federal Reports. An employer or other covered entity may utilize an appropriate federal report in lieu of the CEIR. Appropriate federal reports include the EEOC's EEO-1, EEO-2, EEO-3, EEO-4, EEO-5, and EEO-6 reports and appropriate reports filed with the Office of Federal Contract Compliance Programs (OFCCP).

(2) Sample Forms and Guidelines. Appropriate copies of sample forms and applicable guidelines shall be available to any employer or other covered entity from the Civil Rights Department of Fair Employment and Housing.

(3) Special Reporting. If an employer or other covered entity is engaged in activities for which the standard reporting criteria are not appropriate, special reporting procedures may be required. In such case, the employer or other covered entity should so advise the Department and submit a specific proposal for an alternative reporting system prior to the date on which the report should be prepared. If it is claimed that the preparation of the

report would create undue hardship, an employer may apply to the Department for an exemption from the requirements of this section.

(4) Remedy for Failure to Prepare or Make Reports Available. Upon application by the ~~FEHCCRC~~ or ~~DFEHCRD~~ for judicial relief, any employer failing or refusing to prepare or to make available reports as required under this section may be compelled to do so by a Superior Court of California.

(5) Penalties for False Statements. The willful making of false statements on a CEIR or other required record is a violation of California Government Code section 12976, and is punishable by fine or imprisonment as set forth therein.

(b) Applicant Identification Records. Unless otherwise prohibited by law and for recordkeeping purposes only, every employer or other covered entity shall maintain data regarding the race, sex, and national origin of each applicant and for the job for which he or she applied. If such data is to be provided on an identification form, this form shall be separate or detachable from the application form itself. Employment decisions shall not be based on whether an applicant has provided this information, nor shall the applicant identification information be used for discriminatory purposes, except pursuant to a bona fide affirmative action or non-discrimination plan.

(1) For recordkeeping purposes only, “applicant” means any individual who files a formal application or, where an employer or other covered entity does not provide application forms, any individual who otherwise indicates to the employer or other covered entity a specific desire to be considered for employment. An individual who simply appears to make an informal inquiry or who files an unsolicited resume upon which no employment action is taken is not an applicant.

(2) An employer or other covered entity shall either retain the original documents used to identify applicants, or keep statistical summaries of the collected information.

(3) Applicant records shall be preserved for the time period set forth in subdivisions (c)(1) and (2) below.

(c) Preservation of Records. Any personnel or other employment records made or kept by any employer or other covered entity dealing with any employment practice and affecting any employment benefit of any applicant or employee (including all applications, personnel, membership or employment referral records or files) shall be preserved by the employer or other covered entity for a period of two years from the date of the making of the record or the date of the personnel action involved, whichever occurs later. However, the State Personnel Board shall maintain such records and files for a period of one year.

(1) California Employment Information Report. Every employer subject to subsection (a) above shall preserve for a period of two years from the date of preparation of the CEIR such records as were necessary for completion of the CEIR.

(2) Applicant Identification Records. Every employer subject to subsection (b) above shall preserve applicant identification information for a period of two years from the date it was received.

(3) Separate Records on Sex, Race, and National Origin. Records as to the sex, race, or national origin of any individual accepted for employment shall be kept separately from the employee's main personnel file or other records available to those responsible for personnel decisions. For example, such records could be kept as part of an automatic data processing system in the payroll department.

(4) After Filing of Complaint. Upon notice of or knowledge that a complaint has been filed against it under the Act, any respondent, including the State Personnel Board, shall maintain and preserve any and all relevant records and files until such complaint is fully and finally disposed of and all appeals from related proceedings have concluded.

(A) For purposes of this subsection, "related proceedings" shall include any action brought in Superior Court pursuant to section 12965 of the Government Code.

(B) The term "records and files relevant to the complaint" shall include, but is not limited to, personnel or employment records relating to the complaining party and to all other employees holding similar positions to that held or sought by the complainant at the facility or other relevant subdivision where the discriminatory practice allegedly occurred. The term also includes applications, forms or test papers completed by the complainant and by all other candidates for the same position at that facility or other relevant subdivision where the employment practice occurred. All relevant records made or kept pursuant to subsections (a) and (b) above shall also be preserved.

(C) The term "fully and finally disposed of and all appeals from related proceedings have concluded" refers to the expiration of the statutory period within which a complainant or respondent may bring an action in Superior Court, or an agreement has been reached by the parties whereby no further judicial review is available to any of the parties, or a final order has been entered by a body of judicial review for which the time for filing a notice of appeal has expired.

(d) Posting of Act. Every employer or other covered entity shall post in a conspicuous place or places on its premises a notice to be prepared and distributed by the Department, which sets forth excerpts of the Act and such relevant information the Department deems necessary to explain the Act. Such employers employing significant numbers, no less than 10% of their work force, of non-English-speaking persons (e.g., Chinese or Spanish speaking) at any facility or establishment must also post in the appropriate foreign language at each such facility or establishment. Such notices may be obtained from the Department.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12940 and 12946, Government Code.

Article 2. Particular Employment Practices

§ 11017.1. Consideration of Criminal History in Employment Decisions.

~~(a)~~(a) Except in the circumstances addressed in subdivisions (a)(1) - (4) below, employers and other covered entities (“employers” for purposes of this section) are prohibited from inquiring into, considering, distributing, or disseminating information related to the criminal history of an applicant until after the employer has made a conditional offer of employment to the applicant. Employers are prohibited from inquiring about criminal history on employment applications or from seeking such information through other means, such as a background check or internet searches directed at discovering criminal history, until after a conditional employment offer has been made to the applicant. Employers who violate the prohibition on inquiring into criminal history information prior to making a conditional offer of employment may not, after extending a conditional offer of employment, use an employee’s pre-conditional offer failure to disclose criminal history information as a factor in subsequent employment decisions, including denial of the position conditionally offered. The prohibition against inquiring about or using any criminal history before a conditional offer of employment has been made does not apply in the following circumstances (though use of such criminal history, either during the application process or during employment, is still subject to the requirements in subdivisions (c) and (e) - (i) of this regulation):

(1) If the position is one for which a state or local agency is otherwise required by law to conduct a conviction history background check;

(2) If the position is with a criminal justice agency, as defined in Section 13101 of the Penal Code;

(3) If the position is as a Farm Labor Contractor, as described in Section 1685 of the Labor Code; or

(4) If the position is one that an employer or an employer’s agent is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history. Federal law, for purposes of this provision, includes rules or regulations promulgated by a self-regulatory organization as defined in Section 3(a)(26) of the Security Exchange Act of 1934, 15 U.S.C. § 78c(a)(26).

(b) A labor contractor, union hiring hall, and client employer are governed in the same way by section 11017.1 of these regulations as are other employers.

(1) A labor contractor or union hiring hall may not decline to admit a worker to a pool or availability list, discontinue a worker’s inclusion in a pool or availability list, or decline to refer a worker to a position with a client employer, because of the worker’s criminal history unless the labor contractor or union hiring hall has complied with the procedures and requirements outlined in section 11017.1 of these regulations. To the extent labor contractors or union hiring halls place applicants into a pool of workers from which

individuals may be assigned to a variety of positions, the labor contractors or union hiring halls must still comply with the requirements of section 11017.1, including the individualized assessment of whether any conviction history being considered has a direct and adverse relationship with the specific duties of the jobs for which the applicant may be assigned from the pool or hall.

(2) If a labor contractor or union hiring hall re-conducts inquiries into criminal history to maintain the eligibility of workers admitted to a pool or availability list, then it must comply with the procedures and requirements outlined in section 11017.1 of these regulations. When re-conducting an inquiry, labor contractors or union hiring halls cannot satisfy the requirements of subdivision (c) if they disqualify a worker from retention in a pool based on conviction history that was already considered and deemed not disqualifying for entry into the pool in the first place unless the decision is based on new material developments such as changes to job duties, legal requirements, or experience or data regarding the particular convictions involved.

(3) A client employer may inquire into or consider the conviction history of a worker supplied by a labor contractor or union hiring hall only after extending a conditional offer of employment to the worker and when following the procedures described in subdivisions (a) through (d), unless the specific position is exempted pursuant to subdivisions (a)(1)- (4). A client employer violates this section by instructing labor contractors or union hiring halls to refer only workers without conviction records, unless exempted by subdivisions (a)(1) - (4).

(4) For purposes of section 11017.1 of these regulations only:

(A) “Applicant” includes, in addition to the individuals within the scope of the general definition in section 11008(a) of these regulations, individuals who have been conditionally offered employment, even if they have commenced employment during the period of time the employer undertakes a post-conditional offer review and consideration of criminal history. An employer cannot evade the requirements of Government Code section 12952 or this regulation by having an individual lose their status as an “applicant” by working before undertaking a post-conditional offer review of the individual’s criminal history.

(B) “Employer” includes a labor contractor and a client employer.

(C) “Client employer” means a business entity, regardless of its form, that selects workers from a pool or availability list, or obtains or is provided workers to perform labor within its usual course of business from a labor contractor.

(D) “Labor contractor” means an individual or entity, either with or without a contract, which supplies a client employer with, or maintains a pool or availability list of, workers to perform labor within the client employer’s usual course of business. This definition is not intended to include Farm Labor Contractors.

(E) “Hiring hall” means an agency or office operated by a union, by an employer and union, or by a state or local employment service, to provide and place employees for specific jobs.

(F) “Pool or availability list” means applicants or employees admitted into entry in the hiring hall or other hiring pool utilized by one or more employers and/or provided by a labor contractor for use by prospective employers.

(c) Consideration of Criminal History after a Conditional Offer of Employment Has Been Made. Employers in California are prohibited from inquiring into, considering, distributing, or disseminating information regarding the following types of criminal history both after a conditional offer has been made and in any other subsequent employment decisions such as decisions regarding promotion, training, discipline, lay-off, and termination:

(1) An arrest or detention that did not result in conviction (Labor Code section 432.7 (see limited exceptions in subdivisions (a)(1) for an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial and (f)(1) for specified positions at health facilities); Government Code section 12952 (for hiring decisions));

(2) Referral to or participation in a pretrial or post-trial diversion program (Labor Code section 432.7 and Government Code section 12952);

(A) While employers are prohibited from considering referral to or participation in a pretrial or post-trial diversion program, it is permissible to consider these programs as evidence of rehabilitation or mitigating circumstances after a conditional offer has been made if offered by the applicant as evidence of rehabilitation or mitigating circumstances.

(B) While employers are prohibited from considering referral to or participation in a pretrial or post-trial diversion program, until a pretrial or post-trial diversion program is completed and the underlying pending charges or conviction dismissed, sealed, or eradicated, employers may still consider the conviction or pending charges themselves after a conditional offer is made.

(3) A conviction that has been judicially dismissed or ordered sealed, expunged or statutorily eradicated pursuant to law (e.g., juvenile offense records sealed pursuant to Welfare and Institutions Code section 389 and Penal Code sections 851.7 or 1203.45) or any conviction for which the person has received a full pardon or has been issued a certificate of rehabilitation (Id.);

(4) An arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law (Labor Code section 432.7); and

(5) A non-felony conviction for possession of marijuana that is two or more years old (Labor Code section 432.8).

(6) In addition to the limitations provided in subdivisions (c)(1)-(5), employers that obtain investigative consumer reports such as background checks are also subject to the requirements of the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.) and the California Investigative Consumer Reporting Agencies Act (Civil Code section 1786 et seq.).

(7) Employers may also be subject to local laws or city ordinances that provide additional limitations.

(d) Requirements if an Employer Intends to Deny an Applicant the Employment Conditionally Offered Because of the Applicant's Conviction History.

(1) If an employer intends to deny an applicant the employment position they were conditionally offered based solely or in part on the applicant's conviction history, the employer must first make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. The standard for determining what constitutes a direct and adverse relationship that justifies denying the applicant the position is the same standard described in subdivision (g) of this section that is used to determine whether the criminal conviction history is job-related and consistent with business necessity. The individualized assessment needs to include, at a minimum, consideration of the following factors:

(A) The nature and gravity of the offense or conduct;

(B) The time that has passed since the offense or conduct and/or completion of the sentence; and

(C) The nature of the job held or sought.

(2) If, after conducting an individualized assessment, the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant from the employment conditionally offered, the employer shall notify the applicant of the preliminary decision in writing. The written notice to the applicant may, but is not required to, justify or explain the employer's reasoning for making the decision. However, the notice to the applicant must include all of the following:

(A) Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer;

(B) A copy of the conviction history report utilized or relied on by the employer, if any (such reports include, but are not limited to: consumer reports, credit reports, public records, results of internet searches, news articles, or any other writing containing information related to the conviction history that was utilized or relied upon by the employer); and

(C) An explanation of the applicant's right to respond to the notice before the preliminary decision rescinding the offer of employment becomes final and the deadline by which to respond (which can be no less than five business days from the date of receipt of the notice). If notice is transmitted through a format that does not provide a confirmation of receipt, such as a written notice mailed by an employer without tracking delivery enabled, the notice shall be deemed received five calendar days after the mailing is deposited for delivery for California addresses, ten calendar days after the mailing for addresses outside of California, and twenty calendar days after mailing for addresses outside of the United States. The explanation shall inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both. The types of evidence that may demonstrate rehabilitation or mitigating circumstances may include, but are not limited to: the length and consistency of employment history before and after the offense or conduct; the facts or circumstances surrounding the offense or conduct; whether the individual is bonded under a federal, state, or local bonding program; successful completion, or compliance with the terms and conditions, of probation or parole; and rehabilitation efforts such as education or training. If, within five business days of receipt of the notice (or any later deadline set by the employer), the applicant notifies the employer in writing that the applicant disputes the accuracy of the conviction history being relied upon and that the applicant is taking specific steps to obtain evidence supporting the applicant's assertion, then the applicant shall be permitted no less than five additional business days to respond to the notice before the employer's decision to rescind the employment offer becomes final.

(3) The employer shall consider any information submitted by the applicant before making a final decision regarding whether to rescind the conditional offer of employment. If the employer makes a final decision to rescind the conditional offer and deny an application based solely or in part on the applicant's conviction history, the employer shall notify the applicant in a writing that includes the following:

(A) The final denial or disqualification decision reached. The employer may also include, but is not required to include, the justification or an explanation of the employer's reasoning for reaching the decision that it did;

(B) Any procedure the employer has for the applicant to challenge the decision or request reconsideration; and

(C) The right to contest the decision by filing a complaint with the Civil Rights Department of Fair Employment and Housing.

(e) Disparate Treatment. The Act also prohibits employers from treating applicants or employees differently in the course of considering criminal conviction history, or any evidence of rehabilitation or mitigating circumstances, if the disparate treatment is substantially motivated by a basis enumerated in the Act.

(f) Consideration of Other Criminal Convictions and the Potential Adverse Impact. In addition to the types of criminal history addressed in subdivision (c) that employers are explicitly prohibited from inquiring about or considering unless an exception applies, consideration of other forms of criminal convictions, not enumerated above, may have an adverse impact on individuals on a basis protected by the Act, including, but not limited to, gender, race, and national origin. An applicant or employee bears the burden of demonstrating that the policy of considering criminal convictions has an adverse impact on a basis enumerated in the Act. For purposes of such a determination, adverse impact is defined at Sections 11017 and 11010 and the Uniform Guidelines on Employee Selection and Procedures (29 C.F.R. 1607 (1978)) incorporated by reference in Section 11017(a) and (e). The applicant(s) or employee(s) bears the burden of proving an adverse impact. An adverse impact may be established through the use of conviction statistics or by offering any other evidence that establishes an adverse impact. State- or national-level statistics showing substantial disparities in the conviction records of one or more categories enumerated in the Act are presumptively sufficient to establish an adverse impact. This presumption may be rebutted by a showing that there is a reason to expect a markedly different result after accounting for any particularized circumstances such as the geographic area encompassed by the applicant or employee pool, the particular types of convictions being considered, or the particular job at issue.

(g) Establishing “Job-Related and Consistent with Business Necessity.”

(1) If the policy or practice of considering criminal convictions creates an adverse impact on applicants or employees on a basis enumerated in the Act, the burden shifts to the employer to establish that the policy is nonetheless justifiable because it is job-related and consistent with business necessity. The criminal conviction consideration policy or practice needs to bear a demonstrable relationship to successful performance on the job and in the workplace and measure the person’s fitness for the specific position(s), not merely to evaluate the person in the abstract. In order to establish job-relatedness and business necessity, any employer must demonstrate that the policy or practice is appropriately tailored, taking into account at least the following factors:

(A) The nature and gravity of the offense or conduct;

(B) The time that has passed since the offense or conduct and/or completion of the sentence; and

(C) The nature of the job held or sought.

(2) Demonstrating that a policy or practice of considering conviction history in employment decisions is appropriately tailored to the job for which it is used as an evaluation factor requires that an employer demonstrate the applicant’s conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. Bright-line conviction disqualification or consideration policies or practices that include conviction-related information that is seven or more years old are subject to a rebuttable presumption that they are not sufficiently tailored to meet the job-related and consistent with business necessity

affirmative defense (except if justified by subdivision (h) below). An individualized assessment must involve notice to the adversely impacted employee (before any adverse action is taken) that they have been screened out because of a criminal conviction; a reasonable opportunity for the individuals to demonstrate that the exclusion should not be applied due to their particular circumstances; and consideration by the employer as to whether the additional information provided by the individuals or otherwise obtained by the employer warrants an exception to the exclusion and shows that the policy as applied to the employee is not job related and consistent with business necessity.

(3) Before an employer may take an adverse action such as discharging, laying off, or declining to promote an adversely impacted individual based on conviction history obtained by a source other than the applicant or employee (e.g. through a credit report or internally generated research), the employer must give the impacted individual notice of the disqualifying conviction and a reasonable opportunity to present evidence that the information is factually inaccurate. If the applicant or employee establishes that the record is factually inaccurate, then that record cannot be considered in the employment decision.

(h) Compliance with Federal or State Laws, Regulations, or Licensing Requirements Permitting or Requiring Consideration of Criminal History. In some instances, employers are subject to federal or state laws or regulations that prohibit individuals with certain criminal records from holding particular positions or occupations or mandate a screening process employers are required or permitted to utilize before employing individuals in such positions or occupations (e.g., 21 U.S.C. § 830(e)(1)(G); Labor Code sections 432.7). Examples include, but are not limited to, government agencies employing individuals as peace officers, employers employing individuals at health facilities where they will have regular access to patients, and employers employing individuals at health facilities or pharmacies where they will have access to medication or controlled substances. Some federal and state laws and regulations make criminal history a determining factor in eligibility for occupational licenses (e.g., 49 U.S.C. § 31310). Compliance with federal or state laws or regulations that mandate particular criminal history screening processes, or requiring that an employee or applicant possess or obtain any required occupational licenses constitute rebuttable defenses to an adverse impact claim under the Act.

(i) Less Discriminatory Alternatives. If an employer demonstrates that its policy or practice of considering conviction history is job-related and consistent with business necessity, adversely impacted employees or applicants may still prevail under the Act if they can demonstrate that there is a less discriminatory policy or practice that serves the employer's goals as effectively as the challenged policy or practice, such as a more narrowly targeted list of convictions or another form of inquiry that evaluates job qualification or risk as accurately without significantly increasing the cost or burden on the employer.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12940 and 12952, Government Code.

Article 5. Sex Discrimination

§ 11029. General Prohibition against Discrimination on the Basis of Sex.

(a) Statutory Source. These regulations are adopted by the ~~Fair Employment and Housing Civil Rights~~ Council pursuant to sections 12935, 12940, 12943, and 12945 of the Government Code.

(b) Statement of Purpose. The purpose of the laws against discrimination and harassment in employment because of sex is to eliminate the means by which individuals, by virtue of their sex, gender identity, or gender expression, are treated differently, paid less, treated adversely based on stereotyping, subjected to conduct of a sexual nature, subjected to hostile work environments, or made to suffer other forms of adverse action, and to guarantee that in the future equal employment benefits will be afforded regardless of the individual's sex.

(c) Incorporation of General Regulations. These regulations pertaining to discrimination on the basis of sex incorporate each of the provisions of Articles 1 and 2 of Subchapter 2, unless a provision is specifically excluded or modified.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12940, 12943 and 12945, Government Code.

§ 11030. Definitions.

(a) "Gender expression" means a person's gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person's sex assigned at birth.

(b) "Gender identity" means each person's internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender.

(c) "Sex" has the same definition as provided in Government Code section 12926, which includes, but is not limited to, pregnancy; childbirth; medical conditions related to pregnancy, childbirth, or breast feeding; gender; gender identity; and gender expression, or perception by a third party of any of the aforementioned.

(d) "Sex Stereotype" includes, but is not limited to, an assumption about a person's appearance or behavior, gender roles, gender expression, or gender identity, or about an individual's ability or inability to perform certain kinds of work based on a myth, social expectation, or generalization about the individual's sex.

(e) "Transgender" is a general term that refers to a person whose gender identity differs from the person's sex assigned at birth. A transgender person may or may not have a gender expression that is different from the social expectations of the sex assigned at birth. A transgender person may or may not identify as "transsexual."

(f) “Transitioning” is a process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include, but is not limited to, changes in name and pronoun usage, facility usage, participation in employer-sponsored activities (e.g. sports teams, team-building projects, or volunteering), or undergoing hormone therapy, surgeries, or other medical procedures.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12940, 12943 and 12945, Government Code.

Article 6. Pregnancy, Childbirth or Related Medical Conditions

§ 11049. Employer Notice to Employees of Rights and Obligations for Reasonable Accommodation, to Transfer and to Take Pregnancy Disability Leave.

(a) Employers to Provide Reasonable Advance Notice Advising Employees Affected by Pregnancy of Their FEHA Rights and Obligations. An employer shall give its employees reasonable advance notice of employees’ FEHA rights and obligations regarding pregnancy, childbirth, or related medical conditions as set forth at section 11049(e) and as contained in the Notice as set forth at section 11051(a), or its equivalent.

(b) Content of Employer’s Reasonable Advance Notice. An employer shall provide its employees with information about:

(1) an employee’s right to request reasonable accommodation, transfer, or pregnancy disability leave;

(2) employees’ notice obligations, as set forth in section 11050, to provide adequate advance notice to the employer of the need for reasonable accommodation, transfer or pregnancy disability leave; and

(3) the employer’s requirement, if any, for the employee to provide medical certification to establish the medical advisability for reasonable accommodation, transfer, or pregnancy disability leave, as set forth in section 11050(b).

(c) Consequences of Employer Notice Requirement

(1) If the employer follows the requirements in section 11049(d), such compliance shall constitute reasonable advance notice to the employee of the employer’s notice obligations.

(2) Failure of the employer to provide reasonable advance notice shall preclude the employer from taking any adverse action against the employee, including denying reasonable accommodation, transfer or pregnancy disability leave, for failing to furnish the employer with adequate advance notice of a need for reasonable accommodation, transfer, or pregnancy disability leave.

(d) Distribution of Notices

(1) Employers shall post and keep posted the appropriate notice on its premises, in conspicuous places where employees are employed. The notice shall explain the Act's provisions and provide information about how to contact the Civil Rights Department of Fair Employment and Housing to file a complaint and learn more about rights and obligations under the Act. The poster and the text must be large enough to be easily read and contain fully legible text. Electronic posting is sufficient to meet this posting requirement as long as it is posted electronically in a conspicuous place or places where employees would tend to view it in the workplace.

(2) An employer is also required to give an employee a copy of the appropriate notice as soon as practicable after the employee tells the employer of her pregnancy or sooner if the employee inquires about reasonable accommodation, transfer, or pregnancy disability leaves.

(3) If the employer publishes an employee handbook that describes other kinds of reasonable accommodation, transfers or temporary disability leaves available to its employees, that employer shall include a description of reasonable accommodation, transfer, and pregnancy disability leave in the next edition of its handbook that it publishes following adoption of these regulations. In the alternative, the employer may distribute to its employees a copy of its Notice at least annually. Distribution may be by electronic mail.

(4) **Non-English Speaking Workforce.** Any FEHA-covered employer whose work force at any facility or establishment is comprised of 10 percent or more persons whose spoken language is not English shall translate the notice into every language that is spoken by at least 10 percent of the workforce. In addition, any FEHA-covered employer shall make a reasonable effort to give either verbal or written notice in the appropriate language to any employee who the employer knows is not proficient in English, and for whom written notice previously has not been given in her primary language, of her rights to pregnancy disability leave, reasonable accommodation, and transfer, once the employer knows the employee is pregnant.

(e) **Notice.** An employer may provide a leave policy that is more generous than that required by FEHA if that more generous policy is provided to all similarly-situated, disabled employees. An employer may develop its own notice or it may choose to use the text provided in section 11051, unless it does not accurately reflect its own policy.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12940 and 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq. and FMLA regulations, 29 C.F.R. § 825.

§ 11050. Employee Requests for Reasonable Accommodation, Transfer or Pregnancy Disability Leave: Advance Notice; Medical Certification; Employer Response.

The following rules apply to any request for reasonable accommodation, transfer, or disability leave because of pregnancy.

(a) Adequate Advance Notice

(1) Verbal or Written Notice. An employee shall provide timely oral or written notice sufficient to make the employer aware that the employee needs reasonable accommodation, transfer, or pregnancy disability leave, and, where practicable, the anticipated timing and duration of the reasonable accommodation, transfer or pregnancy disability leave.

(2) 30 Days Advance Notice. An employee must provide the employer at least 30 days advance notice before the start of reasonable accommodation, transfer, or pregnancy disability leave if the need for the reasonable accommodation, transfer, or leave is foreseeable. The employee shall consult with the employer and make a reasonable effort to schedule any planned appointment or medical treatment to minimize disruption to the employer's operations, subject to the health care provider's approval.

(3) When 30 Days Is Not Practicable. If 30 days advance notice is not practicable, because it is not known when reasonable accommodation, transfer, or leave will be required to begin, or because of a change in circumstances, a medical emergency, or other good cause, notice must be given as soon as practicable.

(4) Prohibition against Denial of Reasonable Accommodation, Transfer, or Leave in Emergency or Unforeseeable Circumstances. An employer shall not deny reasonable accommodation, transfer, or pregnancy disability leave, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide adequate advance notice of the need for the reasonable accommodation, transfer, or leave.

(5) Employer Response to Reasonable Accommodation, Transfer, or Pregnancy Disability Leave Request. The employer shall respond to the reasonable accommodation, transfer, or pregnancy disability leave request as soon as practicable, and, in any event no later than 10 calendar days after receiving the request. The employer shall attempt to respond to the leave request before the date the leave is due to begin. Once given, approval shall be deemed retroactive to the date of the first day of the leave.

(6) Consequences for Employee Who Fails to Give Employer Adequate Advance Notice of Need for Reasonable Accommodation or Transfer. If an employee fails to give timely advance notice when the need for reasonable accommodation or transfer is foreseeable, the employer may delay the reasonable accommodation or transfer until 30 days after the date the employee provides notice to the employer of the need for the reasonable accommodation or transfer. However, under no circumstances may the employer delay the granting of an employee's reasonable accommodation or transfer if to do so would endanger the employee's health, her pregnancy, or the health of her co-workers.

(7) Direct notice to the employer from the employee rather than from a third party regarding the employee's need for reasonable accommodation, transfer, or pregnancy disability leave is preferred, but not required. The content of any notice must meet the requirements of this section and the employer may require medical certification.

(b) Medical Certification. As a condition of granting reasonable accommodation, transfer, or pregnancy disability leave, the employer may require written medical certification. The employer must notify the employee of the need to provide medical certification; the deadline for providing certification; what constitutes sufficient medical certification; and the consequences for failing to provide medical certification.

(1) An employer must notify the employee of the medical certification requirement each time a certification is required and provide the employee with any employer-required medical certification form for the employee's health care provider to complete. An employer may use the form provided at section 11050(e), or may develop its own form. Notice to the employee of the need for medical certification may be oral if the employee is already out on pregnancy disability leave because the need for the leave was unforeseeable. The employer shall thereafter mail or send via electronic mail or by facsimile a copy of the medical certification form to the employee or to her health care provider, whomever the employee designates.

(2) When the leave is foreseeable and at least 30 days' notice has been provided, the employee shall provide the medical certification before the leave begins. When this is not practicable, the employee shall provide the requested certification to the employer within the time frame requested by the employer (which must be at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(3) When the employer requires medical certification, the employer shall request that an employee furnish medical certification from a health care provider at the time the employee gives notice of the need for reasonable accommodation, transfer or leave or within two business days thereafter, or, in the case of unforeseen leave, within two business days after the leave commences. The employer may request certification at some later date if the employer later has reason to question the appropriateness of the reasonable accommodation, transfer, or leave or its duration.

(4) At the time the employer requests medical certification, the employer shall also advise the employee of the anticipated consequences of an employee's failure to provide adequate medical certification. The employer shall also advise the employee whenever the employer finds a medical certification inadequate or incomplete, and provide the employee a reasonable opportunity to cure any deficiency.

(5) If the employer's sick or medical leave plan imposes medical certification requirements that are less stringent than the medical certification requirements of these regulations, and the employee or employer elects to substitute sick, vacation, personal or

family leave for unpaid pregnancy disability leave, only the employer's less stringent leave certification requirements may be imposed.

(6) The medical certification indicating the medical advisability of reasonable accommodation or a transfer is sufficient if it contains:

(A) A description of the requested reasonable accommodation or transfer;

(B) A statement describing the medical advisability of the reasonable accommodation or transfer because of pregnancy; and

(C) The date on which the need for reasonable accommodation or transfer became or will become medically advisable and the estimated duration of the reasonable accommodation or transfer.

(7) The medical certification indicating disability necessitating a leave is sufficient if it contains:

(A) A statement that the employee needs to take pregnancy disability leave because she is disabled by pregnancy, childbirth or a related medical condition;

(B) The date on which the employee became disabled because of pregnancy and the estimated duration of the leave.

(8) If the certification satisfies the requirements of section 11050(b), the employer must accept it as sufficient. The employer may not ask the employee to provide additional information beyond that allowed by these regulations. Upon expiration of the time period that the health care provider originally estimated the employee would need reasonable accommodation, transfer, or leave, the employer may require the employee to obtain recertification if additional time is requested.

(9) The employer is responsible for complying with all applicable law regarding the confidentiality of any medical information received.

(c) Failure to Provide Medical Certification

(1) In the case of a foreseeable need for reasonable accommodation, transfer, or pregnancy disability leave, an employer may delay granting the reasonable accommodation, transfer or leave to an employee who fails to provide timely certification after the employer has requested the employee to furnish such certification (i.e., within 15 calendar days, if practicable), until the required certification is provided.

(2) When the need for reasonable accommodation, transfer or leave is not foreseeable, or in the case of recertification, an employee shall provide certification (or recertification) within the time frame requested by the employer (which must be at least 15 days after the employer's request) or as soon as reasonably possible under the circumstances. In the

case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. If an employee fails to provide a medical certification within a reasonable time under the pertinent circumstances, the employer may delay the employee’s continuation of the reasonable accommodation, transfer or pregnancy disability leave.

(d) Release to Return to Work. As a condition of an employee’s return from pregnancy disability leave or transfer, the employer may require the employee to obtain a release to return-to-work from her health care provider stating that she is able to resume her original job or duties only if the employer has a uniformly applied practice or policy of requiring such releases from other similarly situated employees returning to work after a non-pregnancy related disability leave or transfer.

(e) Medical Certification Form. Employers requiring written medical certification from their employees who request a reasonable accommodation, transfer or disability leave because of pregnancy may develop their own form, utilize one provided by the employee’s health care provider or use the form provided below.

~~FAIR EMPLOYMENT & HOUSING~~ CIVIL RIGHTS COUNCIL

CERTIFICATION OF HEALTH CARE PROVIDER FOR PREGNANCY DISABILITY LEAVE, TRANSFER AND/OR REASONABLE ACCOMMODATION

Employee’s Name: _____

Please certify that, because of this patient’s pregnancy, childbirth, or a related medical condition (including, but not limited to, recovery from pregnancy, childbirth, loss or end of pregnancy, or post-partum depression), this patient needs (check all appropriate category boxes):

Time off for medical appointments.

Specify when and for what duration:

A disability leave. [Because of a patient’s pregnancy, childbirth or a related medical condition, she cannot perform one or more of the essential functions of her job or cannot perform any of these functions without undue risk to herself, to her pregnancy’s successful completion, or to other persons.]

Beginning (Estimate): _____

Ending (Estimate): _____

Intermittent leave. Specify medically advisable intermittent leave schedule:

Beginning (Estimate): _____

Ending (Estimate): _____

Reduced work schedule. [Specify medically advisable reduced work schedule.]

Beginning (Estimate): _____

Ending (Estimate): _____

Transfer to a less strenuous or hazardous position or to be assigned to less strenuous or hazardous duties [specify what would be a medically advisable position/duties].

Beginning (Estimate): _____

Ending (Estimate): _____

Reasonable accommodation(s). [Specify medically advisable needed accommodation(s). These could include, but are not limited to, modifying lifting requirements, or providing more frequent breaks, or providing a stool or chair.]

Beginning (Estimate): _____

Ending (Estimate): _____

Name, license number and medical/health care specialty [printed] of health care provider.

Signature of health care provider:

Date:

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12940 and 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq., and FMLA regulations, 29 C.F.R. § 825.

§ 11051. Employer Notice.

YOUR RIGHTS AND OBLIGATIONS AS A PREGNANT EMPLOYEE

If you are pregnant, have a related medical condition, or are recovering from childbirth, PLEASE READ THIS NOTICE.

- California law protects employees against discrimination or harassment because of an employee's pregnancy, childbirth or any related medical condition (referred to below as "because of pregnancy"). California law also prohibits employers from denying or interfering with an employee's pregnancy-related employment rights.
- Your employer has an obligation to:
 - reasonably accommodate your medical needs related to pregnancy, childbirth or related conditions (such as temporarily modifying your work duties, providing you with a stool or chair, or allowing more frequent breaks);
 - transfer you to a less strenuous or hazardous position (where one is available) or duties if medically needed because of your pregnancy; and
 - provide you with pregnancy disability leave (PDL) of up to four months (the working days you normally would work in one-third of a year or 17 1/3 weeks) and return you to your same job when you are no longer disabled by your pregnancy or, in certain instances, to a comparable job. Taking PDL, however, does not protect you from non-leave related employment actions, such as a layoff.

- provide a reasonable amount of break time and use of a room or other location in close proximity to the employee's work area to express breast milk in private as set forth in the Labor Code.

- For pregnancy disability leave:

- PDL is not for an automatic period of time, but for the period of time that you are disabled by pregnancy. Your health care provider determines how much time you will need.

- Once your employer has been informed that you need to take PDL, your employer must guarantee in writing that you can return to work in your same position if you request a written guarantee. Your employer may require you to submit written medical certification from your health care provider substantiating the need for your leave.

- PDL may include, but is not limited to, additional or more frequent breaks, time for prenatal or postnatal medical appointments, doctor-ordered bed rest, severe morning sickness, gestational diabetes, pregnancy-induced hypertension, preeclampsia, recovery from childbirth or loss or end of pregnancy, and/or post-partum depression.

- PDL does not need to be taken all at once but can be taken on an as-needed basis as required by your health care provider, including intermittent leave or a reduced work schedule, all of which counts against your four month entitlement to leave.

- Your leave will be paid or unpaid depending on your employer's policy for other medical leaves. You may also be eligible for state disability insurance or Paid Family Leave (PFL), administered by the California Employment Development Department.

- At your discretion, you can use any vacation or other paid time off during your PDL.

- Your employer may require or you may choose to use any available sick leave during your PDL.

- Your employer is required to continue your group health coverage during your PDL at the same level and under the same conditions that coverage would have been provided if you had continued in employment continuously for the duration of your leave.

- Taking PDL may impact certain of your benefits and your seniority date; please contact your employer for details.

- If possible, you must provide at least 30 days' advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for yourself). For events that are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave. Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

Notice Obligations as an Employee.

- Give your employer reasonable notice: To receive reasonable accommodation, obtain a transfer, or take PDL, you must give your employer sufficient notice for your employer to make appropriate plans. Sufficient notice means 30 days advance notice if the need for the reasonable accommodation, transfer, or PDL is foreseeable, otherwise as soon as practicable if the need is an emergency or unforeseeable.
- Provide a Written Medical Certification from Your Health Care Provider. Except in a medical emergency where there is no time to obtain it, your employer may require you to supply a written medical certification from your health care provider of the medical need for your reasonable accommodation, transfer or PDL. If the need is an emergency or unforeseeable, you must provide this certification within the time frame your employer requests, unless it is not practicable for you to do so under the circumstances despite your diligent, good faith efforts. Your employer must provide at least 15 calendar days for you to submit the certification. See your employer for a copy of a medical certification form to give to your health care provider to complete.
- PLEASE NOTE that if you fail to give your employer reasonable advance notice or, if your employer requires it, written medical certification of your medical need, your employer may be justified in delaying your reasonable accommodation, transfer, or PDL.

Additional Rights under California Family Rights Act (CFRA) Leave

- You also may be entitled to additional rights under the California Family Rights Act of 1993 (CFRA) if you have more than 12 months of service with us and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave. This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition (not related to pregnancy) or that of your child, parent or spouse. While the law provides only unpaid leave, employees may choose or employers may require use of accrued paid leave while taking CFRA leave under certain circumstances. For further information on the availability CFRA leave, please review your employer's Notice regarding the availability of CFRA leave.

This notice is a summary of your rights and obligations under the Fair Employment and Housing Act (FEHA). For more information about your rights and obligations as a pregnant employee, contact your employer, visit the Civil Rights Department's of Fair Employment and Housing's ~~W~~web-site at ~~www.dfeh.ca.gov~~<https://calcivilrights.ca.gov>, or contact the Department at (800) 884-1684. The text of the FEHA and the regulations interpreting it are available on the Civil Rights Department's of Fair Employment and Housing's ~~W~~web-site at ~~www.dfeh.ca.gov~~<https://calcivilrights.ca.gov>.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12940 and 12945, Government Code; FMLA, 29 U.S.C. § 2601, et seq., and FMLA regulations, 29 C.F.R. § 825.

Article 7. Marital Status Discrimination

§ 11052. General Prohibition Against Discrimination on the Basis of Marital Status.

(a) Statutory Source. These regulations are adopted by the ~~Fair Employment and Housing~~Civil Rights Council pursuant to Section 12940 of the Government Code.

(b) Statement of Purpose. The purpose of the law prohibiting marital status discrimination is to make it unlawful for an employer or other covered entity to deny or grant employment benefits for the reason that an applicant or employee is either married or unmarried.

(c) Incorporation of General Regulations. These regulations pertaining to discrimination on the basis of marital status incorporate each of the provisions of Articles 1 and 2 of Subchapter 2, unless a provision is specifically excluded or modified.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921 and 12940, Government Code.

Article 9. Disability Discrimination

§ 11064. General Prohibitions against Discrimination on the Basis of Disability.

(a) Statutory Source. These regulations are adopted by the Council pursuant to sections 12926, 12926.1 and 12940 of the Government Code.

(b) Statement of Purpose. The ~~Fair Employment and Housing~~Civil Rights Council is committed to ensuring each individual employment opportunities commensurate with his or her abilities. These regulations are designed to ensure discrimination-free access to employment opportunities notwithstanding any individual's actual or perceived disability or medical condition; to preserve a valuable pool of experienced, skilled employees; and to strengthen our economy by keeping people working who would otherwise require public assistance. These regulations are to be broadly construed to protect applicants and employees from discrimination due to an actual or perceived physical or mental disability or medical condition that is disabling, potentially disabling or perceived to be disabling or potentially disabling. The definition of disability in these regulations shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the Fair Employment and Housing Act (FEHA). As with the Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendment Act of 2008, the primary focus in cases brought under the FEHA should be whether employers and other covered entities have provided reasonable accommodation to applicants and employees with disabilities, whether all parties have complied with their obligations to engage in the interactive process and whether discrimination has occurred, not whether the individual meets the definition of disability, which should not require extensive analysis. Further, the interactive process requires an individualized assessment of both the job at issue and the specific physical or mental limitations of the individual that are directly related to the need for reasonable accommodation.

(c) Incorporation of General Regulations. These regulations governing discrimination on the basis of disability incorporate each of the provisions of Articles 1 and 2 of Subchapter 2, unless specifically excluded or modified.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1 and 12940, Government Code.

Article 11. California Family Rights Act

§ 11087. Definitions.

The following definitions apply only to this article. The definitions in the federal regulations that became effective March 8, 2013 interpreting the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. § 2601 et seq.) shall also apply to this article, to the extent that they are not inconsistent with the following definitions:

(a) “Certification” means a written communication from the health care provider of the child, parent, grandparent, grandchild, sibling, spouse, ~~or domestic partner~~, or designated person, or employee with a serious health condition to the employer of the employee requesting a family care leave to care for an aforementioned family member of the employee, or a medical leave for the employee’s own serious health condition.

(1) For family care leave for the employee’s family member, this certification need not identify the serious health condition involved, but shall contain the information identified in Government Code section 12945.2.

(A) the date, if known, on which the serious health condition commenced,

(B) the probable duration of the condition,

(C) an estimate of the amount of time which the health care provider believes the employee needs to care for the family member, and

(D) a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the family member.

1. “Warrants the participation of the employee,” within the meaning of Government Code section 12945.2, includes, but is not limited to, providing psychological comfort and arranging third party care for the family member, as well as directly providing, or participating in, the medical care.

(2) For medical leave for the employee’s own serious health condition, this certification need not, but may, at the employee’s option, identify the serious health condition involved. Any certification shall contain the information identified in Government Code section 12945.2, as is demonstrated in section 11097 of these regulations. For purposes of the certification “unable to perform the function of the employee’s position” means that an employee is unable to perform any one or more of the essential functions of the employee’s position. The certification shall contain:

(A) The date, if known, on which the serious health condition commenced,

(B) The probable duration of the condition, and

(C) A statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of the employee's position.

(b) "CFRA" means the Moore-Brown-Roberti California Family Rights Act of 1993. (California Family Rights Act, Gov. Code, §§ 12945.1-12945.2.) "CFRA leave" means family care or medical leave taken pursuant to CFRA.

(c) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, a child of an employee or the employee's domestic partner, or a person to whom the employee stands in loco parentis.

(1) "In loco parentis" means in the place of a parent; instead of a parent; charged with a parent's rights, duties, and responsibilities. It does not require a biological or legal relationship.

(d) "Covered employer" means any person or individual, including successors in interest of a covered employer, engaged in any business or enterprise in California who directly employs five or more persons within any state of the United States, the District of Columbia or any territory or possession of the United States to perform services for a wage or salary. It also includes the state of California, counties, and any other political or civil subdivision of the state and cities, regardless of the number of employees. There is no requirement that the five employees work at the same location or work full-time. "Employer" as used in these regulations means "covered employer."

(1) "Directly employs" means that the employer maintains an aggregate of at least five part- or full-time employees to perform services for a wage or salary for any part of the day on which the unlawful conduct occurred or on a "regular basis" as that term is defined in subdivision 11008(d)(1)(A). Employees on paid or unpaid leave, including CFRA leave, leave of absence, disciplinary suspension, or other leave, are counted.

(2) "Perform services for a wage or salary" excludes independent contractors as defined in the Labor Code, but includes persons who are compensated in whole or in part by commission.

(3) Where two or more businesses exercise some control over the work or working conditions of the employee, the businesses may be joint employers under CFRA. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality based on the economic realities of the situation. Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(A) Where there is an arrangement between employers to share an employee's services or to interchange employees;

(B) Where one employer acts directly or indirectly in the interest of the other employer in relation to the employee; or

(C) Where the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.

(e) "Designated Person" means any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer may limit an employee to one designated person per 12-month period for family care and medical leave.

(ef) "Domestic partner" means a member of a domestic partnership, as that term is defined in Family Code section 297.

(fg) "Eligible employee" means either of the following:

(1) A full- or part-time employee in California who has been employed for a total of at least 12 months (52 weeks) with the employer at any time prior to the commencement of a CFRA leave, and who has actually worked (within the meaning of the California Labor Code and Industrial Welfare Commission Wage Orders) for the employer at least 1,250 hours during the 12-month period immediately prior to the date the CFRA leave is to commence.

(A) Once the employee meets these two eligibility criteria and takes a leave for a qualifying event, the employee does not have to requalify, in terms of the numbers of hours worked, in order to take additional leave for the same qualifying event during the employee's 12-month leave period.

(B) Employment periods prior to a break in service of seven years or more need not be counted in determining whether the employee has been employed by the employer for at least 12 months, except for a break in service caused by a military service obligation or written agreement to the contrary. Nothing in this section prevents an employer from considering employment prior to a continuous break in service of more than seven years so long as the employer does so uniformly, with respect to all employees with similar breaks in service.

(C) For an employee who takes a pregnancy disability leave, and who then wants to take CFRA leave for reason of the birth of the employee's child immediately after the employee's pregnancy disability leave, the 12-month period during which the employee must have worked 1,250 hours is that period immediately preceding the employee's first day of pregnancy disability leave, not the first day of the subsequent CFRA leave for reason of the birth of the employee's child.

(2) An employee employed by an air carrier as a flight deck or cabin crew member who has been employed for 12 or more months with the employer, has worked or been paid for 60 percent of the applicable monthly guarantee or the equivalent annualized over the preceding 12-month period, and has worked or been paid for at least 504 hours during the preceding 12-month period. For purposes of this subdivision, "applicable monthly guarantee" means the

minimum number of hours for which the employer has agreed to schedule such employees for any given month, unless the employee is on reserve status. For those employees on reserve status, the “applicable monthly guarantee” is the number of hours for which the employer has agreed to pay employees who are on reserve status for any given month pursuant to a collective bargaining agreement, or employer policy if no collective bargaining agreement exists

(3) For purposes of determining an employee’s eligibility for CFRA leave under either subdivision (1) or (2), the following terms also apply:

(A) Once the employee meets their eligibility criteria and gives notice of the need for a leave, the employer may not deny the leave, cut short the leave, or deny any subsequent leave taken for the same qualifying event during the employee’s 12-month leave period, even if the number of employees falls below five employees for purposes of CFRA. In such cases, however, the employee would not be eligible for any subsequent leave requested for a different qualifying event.

(B) If an employee is not eligible for CFRA leave at the start of a leave because the employee has not met the 12-month length of service requirement, the employee may nonetheless meet this requirement while on leave, because leave to which the employee is otherwise entitled counts toward length of service (although not for the 1,250 hour requirement). The employer should designate the portion of the leave in which the employee has met the 12-month requirement as CFRA leave. For example, if an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (e.g. workers’ compensation, group health plan benefits, etc.), the week counts as a week of employment

(gh) “Employment in the same position” means employment in, or reinstatement to, the original position the employee held prior to taking a CFRA leave

(hi) “Employment in a comparable position” means employment in a position that is virtually identical to the employee’s original position in terms of pay, benefits, and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. It must be performed at the same or geographically proximate worksite from where the employee was previously employed. It ordinarily means the same shift or the same or an equivalent work schedule. It has the same meaning as the term “equivalent position” in FMLA and its implementing regulations

(ij) “Family care leave” means either:

(1) Leave of up to a total of 12 workweeks in a 12-month period for reason of the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, and a guarantee of employment, made at the time the leave is granted, in the same or a comparable position upon termination of the leave; or

(2) Leave of up to a total of 12 workweeks in a 12-month period to care for an employee’s child, parent, grandparent, grandchild, sibling, spouse, ~~or~~ domestic partner, or designated person (sometimes referred to as “family members” in these regulations) who has a serious

health condition, and a guarantee of employment, made at the time the leave is granted, in the same or a comparable position upon termination of the leave; or

(3) Leave of up to a total of 12 workweeks in a 12-month period because of a “qualifying exigency,” as that term is defined in Unemployment Code section 3302.2, related to covered active duty or a call to covered active duty of an employee’s spouse, domestic partner, child, or parent in the Armed Forces of the United States

(~~jk~~) “Family member” means an employee’s child, parent, grandparent, grandchild, sibling, spouse, ~~or domestic partner, or designated person.~~

(~~kl~~) “FMLA” means the federal Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., and its implementing regulations, 29 C.F.R. Part 825 that became effective March 8, 2013. “FMLA leave” means family care or medical leave taken pursuant to FMLA.

(~~lm~~) “Grandchild” means the child of an employee’s child.

(~~mn~~) “Grandparent” means a parent of the employee’s parent.

(~~no~~) “Health care provider” means either:

(1) an individual holding either a physician’s and surgeon’s certificate issued pursuant to Article 4 (commencing with section 2080) of Chapter 5 of Division 2 of the Business and Professions Code or an osteopathic physician’s and surgeon’s certificate issued pursuant to Article 4.5 (commencing with section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or any other individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises the treatment of the serious health condition, or

(2) any other person who meets the definition of others “capable of providing health care services,” as set forth in FMLA and its implementing regulations.

(~~op~~) “Medical leave” means leave of up to a total of 12 workweeks in a 12-month period because of an employee’s own serious health condition that makes the employee unable to work at all or unable to perform any one or more of the essential functions of the position of that employee. The term “essential functions” is defined in Government Code section 12926. “Medical leave” does not include leave taken for an employee’s pregnancy disability, as defined in (r) below, except as specified below in section 11093(c)(1).

(~~pq~~) “Parent” means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. A biological or legal relationship is not necessary for a person to have stood in loco parentis to the employee as a child.

(~~qr~~) “Parent-in-law” means the parent of a spouse or domestic partner.

(~~rs~~) “Pregnancy disability leave” means a leave taken for disability on account of pregnancy, childbirth, or a related medical condition, pursuant to Government Code section 12945 and defined in section 11035(r) of the regulations.

(st) “Reason of the birth of a child,” within the meaning of Government Code section 12945.2 and these regulations includes, but is not limited to, bonding with a child after birth.

(tu) “Reinstatement” means the return of an employee to the position that the employee held prior to CFRA leave, or a comparable position, and is synonymous with “restoration” within the meaning of FMLA and its implementing regulations.

(uv) “Serious health condition” means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or a family member of the employee that involves either inpatient care or continuing treatment, including, but not limited to, treatment for substance abuse.

(1) “Inpatient care” means a stay in a hospital, hospice, or residential health care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity. A person is considered an “inpatient” when a health care facility formally admits the person to the facility with the expectation that the person will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.

(2) “Incapacity” means the inability to work, attend school, or perform other regular daily activities due to a serious health condition, its treatment, or the recovery that it requires.

(3) “Continuing treatment” means ongoing medical treatment or supervision by a health care provider, as detailed in section 11097 of these regulations.

(vw) “Sibling” means a person related to the employee by blood, adoption, or by having a common legal or biological parent.

(wx) “Spouse” means a partner in marriage as defined in Family Code section 300 or a registered domestic partner, within the meaning of Family Code sections 297 through 297.5. As used in this article and the Family Code, “spouse” includes same-sex partners in marriage.

(xy) “Twelve workweeks” means the equivalent of 12 of the employee’s normally scheduled workweeks. (See also section 11090(c).)

NOTE: Authority cited: Section 12935(a), Government Code. Reference: Section 12945.2, Government Code; *J.E. Robinson v. FEHC* (1992) 2 Cal.4th 226 [5 Cal.Rptr.2d 782]; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 and 2611; and 29 C.F.R. § 825.

§ 11095. Notice of CFRA Rights and Obligations.

(a) Employers to Post Notice.

Every employer covered by the CFRA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act’s provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Civil Rights Department of Fair Employment and Housing. The notice must be posted

prominently where it can be readily seen by employees and applicants for employment. The poster and the text must be large enough to be easily read and contain fully legible text. Electronic posting is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section. If the employer publishes an employee handbook that describes other kinds of personal or disability leaves available to its employees, the employer shall include a description of CFRA leave in the next edition of its handbook it publishes following adoption of these regulations. The employer may include both pregnancy disability leave and CFRA leave requirements in a single notice.

(b) Employers to Give Notice.

Employers are also encouraged to give a copy of the notice to each current and new employee, ensure that copies are otherwise available to each current and new employee, and disseminate the notice in any other way.

(c) Non-English Speaking Workforce.

Any employer whose workforce at any facility or establishment contains 10 percent or more of persons who speak a language other than English as their spoken language shall translate the notice into every language that is spoken by at least 10 percent of the workforce.

(d) Text of Notice.

The text below contains only the minimum requirements of the California Family Rights Act of 1993 and of the employer's obligation to provide pregnancy disability leave. Nothing in this notice requirement prohibits an employer from providing a leave policy that is more generous than that required by CFRA and providing its own notice of its own policy. Covered employers may develop their own notice or they may choose to use the text provided below, unless it does not accurately reflect their own policy.

FAMILY CARE AND MEDICAL LEAVE AND PREGNANCY DISABILITY LEAVE

Under the California Family Rights Act of 1993 (CFRA), if you have more than 12 months of service with us and have worked at least 1,250 hours in the 12-month period before the date you want to begin your leave, and if we employ five or more employees, you may have a right to a family care or medical leave (CFRA leave). This leave may be up to 12 workweeks in a 12-month period for the birth, adoption, or foster care placement of your child or for your own serious health condition or that of your child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, ~~or~~ domestic partner, or designated person. While the law provides only unpaid leave, employees may choose or employers may require use of accrued paid leave while taking CFRA leave under certain circumstances.

Even if you are not eligible for CFRA leave, if you are disabled by pregnancy, childbirth or a related medical condition, you are entitled to take a pregnancy disability leave of up to four months, depending on your period(s) of actual disability. If you are CFRA eligible, you have certain rights to take BOTH a pregnancy disability leave and a CFRA leave for reason of the

birth of your child. Both leaves contain a guarantee of reinstatement - for pregnancy disability it is to the same position and for CFRA it is to the same or a comparable position - at the end of the leave, subject to any defense allowed under the law.

If possible, you must provide at least 30 days' advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment for yourself or of a family member). For events that are unforeseeable, we need you to notify us, at least verbally, as soon as you learn of the need for the leave. Failure to comply with these notice rules is grounds for, and may result in, deferral of the requested leave until you comply with this notice policy.

We may require certification from your health care provider before allowing you a leave for pregnancy disability or for your own serious health condition. We also may require certification from the health care provider of your family member who has a serious health condition, before allowing you a leave to take care of that family member. When medically necessary, leave may be taken on an intermittent or reduced work schedule.

If you are taking a leave for the birth, adoption, or foster care placement of a child, the basic minimum duration of the leave is two weeks, and you must conclude the leave within one year of the birth or placement for adoption or foster care.

Taking a family care or pregnancy disability leave may impact certain of your benefits and your seniority date. If you want more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits, please contact _____.

Note: Authority cited: Section 12935, Government Code. Reference: Sections 12940, 12945 and 12945.2, Government Code; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; and 29 C.F.R. § 825.

§ 11097. Certification Form.

For leaves involving serious health conditions under CFRA or FMLA, the employer may utilize the following Certification of Health Care Provider form or its equivalent. Employers may also utilize any other certification form so long as the health care provider does not disclose the underlying diagnosis of the serious health condition involved without the consent of the patient.

~~FAIR EMPLOYMENT & HOUSING~~ CIVIL RIGHTS COUNCIL

CERTIFICATION OF HEALTH CARE PROVIDER

(California Family Rights Act (CFRA) or Family and Medical Leave Act (FMLA))

IMPORTANT NOTE: The California Genetic Information Nondiscrimination Act of 2011 (CalGINA) prohibits employers and other covered entities from requesting, or requiring, genetic information of an individual or family member of the individual except as specifically allowed by

law. To comply with the Act, we are asking that you not provide any genetic information when responding to this request for medical information. “Genetic Information,” as defined by CalGINA, includes information about the individual’s or the individual’s family member’s genetic tests, information regarding the manifestation of a disease or disorder in a family member of the individual, and includes information from genetic services or participation in clinical research that includes genetic services by an individual or any family member of the individual. “Genetic Information” does not include information about an individual’s sex or age.

1. Employee’s Name:

2. Patient’s Name (If other than employee):

Is patient the employee’s family member (i.e., child, parent, grandparent, grandchild, sibling, spouse, ~~or~~ domestic partner, or designated person)?

(Note: “child” includes a biological, adopted, foster child, a stepchild, a legal ward, a child of the employee’s domestic partner, and a person to whom the employee stands in loco parentis. “Parent” includes a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. A biological or legal relationship is not necessary for a person to have stood in loco parentis to the employee as a child. “Designated person” means any individual related by blood or whose association with the employee is the equivalent of a family relationship.)

Yes No

3. Date medical condition or need for treatment commenced [NOTE: THE HEALTH CARE PROVIDER IS NOT TO DISCLOSE THE UNDERLYING DIAGNOSIS WITHOUT THE CONSENT OF THE PATIENT]:

4. Probable duration of medical condition or need for treatment:

5. Below is a description of what constitutes a “serious health condition” under both the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Does the patient’s condition qualify as a serious health condition?

Yes No

6. If the certification is for the serious health condition of the employee, please answer the following:

Is employee able to perform work of any kind? (If “No,” skip next question.)

Yes No

Is employee unable to perform any one or more of the essential functions of employee’s position? (Answer after reviewing statement from employer of essential functions of employee’s position, or, if none provided, after discussing with employee.)

Yes No

7. If the certification is for the care of the employee’s family member, please answer the following:

Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety, or transportation?

Yes No

After review of the employee’s signed statement (See Item 10 below), does the condition warrant the participation of the employee? (This participation may include psychological comfort and/or arranging for third-party care for the family member.)

Yes No

8. Estimate the period of time care is needed or during which the employee’s presence would be beneficial:

9. Please answer the following questions only if the employee is asking for intermittent leave or a reduced work schedule.

Intermittent Leave: Is it medically necessary for the employee to be off work on an intermittent basis due to the serious health condition of the employee or family member?

Yes No

If yes, please indicate the estimated frequency of the employee’s need for intermittent leave due to the serious health condition, and the duration of such leaves (e.g. 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) _____ month(s) Duration: _____ hours or _____ day(s) per episode

Yes No

Reduced Schedule Leave: Is it medically necessary for the employee to work less than the employee’s normal work schedule due to the serious health condition of the employee or family member?

If yes, please indicate the part-time or reduced work schedule the employee needs: _____ hour(s) per day; _____ days per week, from _____ through _____

Yes No

Time Off for Medical Appointments or Treatment: Is it medically necessary for the employee to

take time off work for doctor’s visits or medical treatment, either by the health care practitioner or another provider of health services?

If yes, please indicate the estimated frequency of the employee’s need for leave for doctor’s visits or medical treatment, and the time required for each appointment, including any recovery period: Frequency: _____ times per _____ week(s) _____ month(s) Duration: _____ hours or _____ day(s) per appointment/treatment

Yes No

ITEM 10 IS TO BE COMPLETED BY THE EMPLOYEE NEEDING FAMILY LEAVE. ****TO BE PROVIDED TO THE HEALTH CARE PROVIDER UNDER SEPARATE COVER.

10. When family care leave is needed to care for a seriously-ill family member, the employee shall state the care the employee will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced work schedule:

.....
.....
.....

11. Printed name of health care provider:

Signature of health care provider:

Date: _____

12. Signature of Employee:

Date: _____

-- Serious Health Condition --

“Serious health condition” means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or a child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, ~~or~~ domestic partner, or designated person of the employee that involves either inpatient care or continuing treatment, including, but not limited to, treatment for substance abuse. A serious health condition may involve one or more of the following:

- 1. Hospital Care Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care. A person is considered an “inpatient” when a health care facility formally

admits the person to the facility with the expectation that the person will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.

2. Absence Plus Treatment

(a) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

3. Pregnancy [NOTE: An employee's own incapacity due to pregnancy is covered as a serious health condition under FMLA but not under CFRA]

Any period of incapacity due to pregnancy or for prenatal care.

4. Chronic Conditions Requiring Treatment - A chronic condition which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision - A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions) - Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

NOTE: Authority cited: Section 12935, Government Code. Reference: Section 12945.2, Government Code; California Genetic Information Nondiscrimination Act, Stats. 2011, ch. 261; Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; and 29 C.F.R. § 825.

Subchapter 5. Contractor Nondiscrimination and Compliance

Article 1. General Matters

§ 11099. Office of Compliance Programs.

(a) Creation and Authority. The Civil Rights Department of Fair Employment and Housing (DFEHCRD) is responsible for the administration of policies, the implementation of standards, and the enforcement of the rules and regulations set forth in this subchapter. ~~The DFEHCRD~~ has created the Office of Compliance Programs (OCP) to carry out these responsibilities. The OCP will operate under the procedures established in this subchapter as well as under other procedures of the Council as set out in this chapter.

(b) Administrator. The OCP will operate under the direction of an Administrator of Compliance Programs, who shall be appointed by and be responsible to the Director of the Department. The Administrator will have direct responsibility for the appointment of staff and the organization and operation of the OCP consistent with the terms of the Act and the provisions of this subchapter.

Note: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§ 11105. Nondiscrimination Clause.

Each state contract and subcontract shall contain a nondiscrimination clause unless specifically exempted pursuant to section 11111. The governmental body awarding the contract may use either clause (a) or clause (b) below. Clause (a) will satisfy the requirements of section 12990 of the Government Code only; clause (b) contains language that will satisfy the requirements of both the Fair Employment and Housing Act and Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (adopted pursuant to Government Code sections 11135-11139.58). Standardized state form OCP-1, containing clause (a), and OCP-2, containing clause (b), will be available through the OCP. These forms may be incorporated into a contract by reference and will fulfill the requirement of this section. The contracting parties may, in lieu of incorporating form OCP-1 or OCP-2, include the required clause in the written contract directly.

Clause (a)

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et

seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.). The applicable regulations of the ~~Fair Employment and Housing~~ Civil Rights Council implementing Government Code section 12990, set forth in Subchapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

2. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Clause (b)

1. During the performance of this contract, the recipient, contractor, and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

2. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135-11139.58), and the regulations or standards adopted by the awarding state agency to implement such article.

3. Contractor or recipient shall permit access by representatives of the Civil Rights Department of ~~Fair Employment and Housing~~ and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.

4. Recipient, contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

5. The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Note: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§ 11107. Enforcement of Clause.

The nondiscrimination clause in state contracts and subcontracts shall be fully and effectively enforced. Any breach of its terms may constitute a material breach of the contract and may result in the imposition of sanctions against the contractor, including but not limited to cancellation, termination, or suspension of the contract in whole or in part, by the contract awarding agency or decertification from future opportunities to contract with the State of California by ~~the~~ DFEHCRD.

Note: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§ 11110. Subcontracting Prohibited with Ineligible Entities.

(a) OCP shall establish and maintain a list of decertified contractors, which shall be updated monthly and published in the first California Notice Register published each month.

(b) No contractor with the State of California shall, during the performance of any contract with the State, enter into any subcontract with any person listed on OCP's list of decertified contractors during the month in which the bid is submitted.

(c) Subcontracting with a decertified contractor in violation of the provisions of this section may constitute a material breach of the contract and may result in the imposition of sanctions against the contractor, including but not limited to cancellation, termination, or suspension of the contract, in whole or in part by the awarding agency, or decertification by the DFEHCRD. Specific knowledge of the unlawfulness of the subcontract is not required to establish a breach, but will be considered by OCP and the contract awarding agency in their determination of the appropriate sanctions.

Note: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§ 11116. Access to Records and Employment Site.

(a) Each contractor shall provide OCP with any relevant information requested and shall permit OCP access to its premises, upon reasonable notice, during normal business hours for the purpose of conducting on-site compliance reviews, employee interviews, and inspecting and copying such books, records, accounts and other material as may be relevant to a matter under investigation for the purpose of determining and enforcing compliance with this subchapter.

(b) All information provided to the DFEHCRD in response to a request from OCP that contains or might reveal a trade secret referred to in section 1905 of Title 18 of the United States Code, or other information that is confidential pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, shall be considered confidential, except that

such information may be disclosed to other officers or employees of the DFEHCRD and may be introduced as evidence in any hearing conducted pursuant to section 11140 of this Chapter. The hearing officer or the director shall issue such orders as may be appropriate to protect the confidentiality of such information.

Note: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§ 11117. Complaints of Discrimination or Noncompliance.

(a) Any interested person may lodge a written complaint of noncompliance with either the DFEHCRD or the contract awarding agency. The complaint shall state the name and address of the contractor and shall set forth a description of the alleged noncompliance. Complaints lodged with the awarding agency shall be immediately referred to the Administrator of OCP. No complaint may be lodged after the expiration of one year from the date upon which the alleged noncompliance occurred.

OCP shall cause any written complaint lodged under the provisions of this section on which it intends to take action to be served, either personally or by ordinary first class mail, upon the respondent contractor and the awarding agency within 45 days. At the discretion of the Administrator, the complaint may not contain the name of the complaining party.

(b) OCP shall notify the contract awarding agency of any action pursuant to section 11138 instituted against a contractor of the agency, and permit the agency to become a party to the action, except that the agency shall be fully responsive to any request for information made by OCP in connection with the action.

Note: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

Article 2. Regulations Applicable to Construction Contracts

§ 11122. Standard California Nondiscrimination Construction Contract Specifications. (Gov. Code, Section 12990.)

In addition to the nondiscrimination clause set forth in section 11105, all non-exempt state construction contracts and subcontracts of \$5,000 or more shall include the specifications set forth in this section.

STANDARD CALIFORNIA NONDISCRIMINATION CONSTRUCTION CONTRACT SPECIFICATIONS (GOV. CODE SECTION 12990)

These specifications are applicable to all state contractors and subcontractors having a construction contract or subcontract of \$5,000 or more.

1. As used in the specifications:

a. "Act" means the Fair Employment and Housing Act.

b. "Administrator" means Administrator, Office of Compliance Programs, California ~~Department of Fair Employment and Housing~~ Civil Rights Department, or any person to whom the Administrator delegates authority.

2. Whenever the contractor or any subcontractor subcontracts a portion of the work, it shall include in each subcontract of \$5,000 or more the nondiscrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.

3. The contractor shall implement the specific nondiscrimination standards provided in paragraphs 6(a) through (e) of these specifications.

4. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer members of any group protected by the Act shall excuse the contractor's obligations under these specifications, Government Code section 12990, or the regulations promulgated pursuant thereto.

5. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.

6. The contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor must be able to demonstrate fully its efforts under steps a. through e. below:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the contractor's employees are assigned to work. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment.

b. Provide written notification within seven days to the director of the ~~DFEH~~ CRD when the referral process of the union or unions with which the contractor has a collective bargaining agreement has impeded the contractor's efforts to meet its obligations.

c. Disseminate the contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the contractor to meet its obligations; and by posting the company policy

on bulletin boards accessible to all employees at each location where construction work is performed.

d. Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general foremen, on-site foremen, etc., are aware of the contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.

e. Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the contractor's obligations under these specifications are being carried out.

7. Contractors are encouraged to participate in voluntary associations that assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on equal employment opportunity in the industry, ensures that the concrete benefits of the program are reflected in the contractor's workforce participation, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's.

8. The contractor is required to provide equal employment opportunity for all persons. Consequently, the contractor may be in violation of the Fair Employment and Housing Act (Government Code section 12990 et seq.) if a particular group is employed in a substantially disparate manner.

9. The contractor shall not use the nondiscrimination standards to discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

10. The contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code section 12990.

11. The contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code section 12990 and its implementing regulations by the awarding agency. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code section 12990.

12. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

Note: Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

Subchapter 6. Nondiscrimination in State-Supported Programs and Activities
[Number jumps are intentional placeholders]

Article 1. Purpose, General Definitions and General Provisions

Subarticle 1. Purpose and General Provisions

§ 11140. Purpose of This Division.

The purpose of this Division is to implement Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Sections 11135 through 11139.58, inclusive, which provides, inter alia, that:

No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

Article 9.5 requires the Secretary of the Health and Welfare Agency with the advice and concurrence of the Fair Employment Practice Commission (hereinafter referred to as the ~~Fair Employment and Housing Commission~~ Civil Rights Council or “~~FEHCCRC~~” in accordance with the terms of the Governor’s Reorganization Plan Number 1 (1980)), to establish standards for determining which persons are protected by Article 9.5 and guidelines for determining what practices are discriminatory. This Division establishes such standards and guidelines.

Article 9.5 also requires the Secretary of the Health and Welfare Agency, with the cooperation of the ~~Fair Employment and Housing Commission~~ Civil Rights Council, to assist State agencies in coordinating their programs and activities and consult with such agencies, as necessary, to ensure that consistent policies, practices and procedures are utilized by such agencies with respect to the enforcement of Article 9.5. This Division establishes guidelines regarding such policies, practices and procedures in order to eliminate conflicting interpretations and standards of

enforcement; increase efficiency and ensure that the ultimate beneficiaries of Article 9.5 have a clear understanding of their rights and the means by which to enforce them.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135 and 11139.5, Government Code.

Subarticle 2. General Definitions

§ 11150. Definitions.

As used in this Division, the following definitions shall govern the meaning of terms defined, unless the terms are otherwise defined or modified in the context in which they are used:

“Benefit” means anything contributing to an improvement in condition, including, but not limited to, the aid or services provided as a result of State support.

“Contract” means any agreement, upon sufficient consideration, to do or not do a particular act.

“Contractor” means, unless otherwise indicated, a person or local agency which receives State support under contract or subcontract, and includes prime contractors and subcontractors at any tier.

“CRC” means the Civil Rights Council created by section 12903 of the Government Code.

“CRD” means the Civil Rights Department created by section 12901 of the Government Code

“DFEH” means the Department of Fair Employment and Housing as defined in Section 1413.1 of the California Labor Code.

“Facility” means all or any portion of buildings, structures, vehicles, equipment, vessels, roads, walks, parking lots or other real or personal property, or interests in such property, such as a life estate.

~~“FEHC” means the Fair Employment and Housing Commission, as defined in Section 1414 of the California Labor Code.~~

“Funded directly by the State” means any payment, transfer, or allocation of State funds to any recipient.

“Grant” means an agreement to provide State support.

“Grantee” means a person or local agency which receives State support under grant or subgrant, and includes prime grantees and subgrantees at any tier.

“Local agency” means a public district, public corporation, authority, agency, board, commission, county, city, city and county, school district, or other public entity.

“May” means permissive.

“Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, corporation, association, committee, legal representative, trustee, trustee in bankruptcy, receiver and any other organization or group of persons acting in concert.

“Program or activity” means any project, action or procedure undertaken directly by recipients of State support or indirectly by recipients through others by contracts, arrangements or agreements, with respect to the public generally or with respect to any private or public entity. Such programs or activities include, but are not limited to, the provisions of employment or goods; the procurement of goods or services; the provision of education, training, health, welfare, rehabilitation, housing, or other services; the provision of cash or loan assistance; or the provision of facilities for furnishing services, financial aid or other benefits. The services, financial aid or other benefits provided under such programs or activities shall be deemed to include:

(1) any services, financial aid or other benefits provided with the aid of State support, or with the aid of other funds or resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order for the recipients to receive the State support; or

(2) any service, financial aid or other benefit provided in or through a facility which is or was provided with the aid of State support or other funds or resources.

“Real property” means land, structures on land, fixtures attached to structures, interests in such property and space on, over or under such property.

“Recipient” means any contractor, local agency, or person, who regularly employs five or more persons and who receives State support, as defined in this Section, in an amount in excess of \$10,000 in the aggregate per State fiscal year or in an amount in excess of \$1000 per transaction, by grant, contract or otherwise, directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the State support. “Recipient” does not include State agencies. However, State agencies may look to this Division for guidance in the administration of their programs and activities.

“Secretary” means the Secretary of the Health and Welfare Agency, as defined in Part 2.5 of Division 3 of Title 2 of the Government Code, or the Secretary’s designee.

“Services to be provided to the public” means the aid or benefits provided directly to the public by a recipient of State support.

“Shall” means mandatory.

“Should” means advisory.

“State agency” means an administrative subdivision or instrumentality of State government, including, but not limited to, agencies, departments, offices, commissions, boards, bureaus and divisions, which has the statutory or constitutional authority to provide State support to any person.

“State financial assistance” means any grant, entitlement, loan, cooperative agreement, contract or any other arrangement by which a State agency provides or otherwise makes available aid to recipients in the form of:

- (1) funds;
- (2) services of State personnel; or
- (3) real or personal property or any interest in or use of such property, including:
 - (A) transfers or leases of property for less than fair market value or for reduced consideration; or
 - (B) proceeds from a subsequent transfer or lease of property if the State share of its fair market value is not returned to the State.

“State support” means the funds or financial assistance provided by the State to a recipient which:

- (1) is “Funded directly by the State” as defined in this Section; or
- (2) receives “State financial assistance” as defined in this Section.

“State supported program” means any program or activity which receives State support, in whole or in part.

“Ultimate beneficiary” means a person identified in Government Code Section 11135 who receives, applies for, or is unlawfully deterred from receiving or applying for, the benefits of, or employment under a program of activity which receives State support.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11135, 11136, 11137, 11139 and 11139.8+1135-11139.5, Government Code.

Subarticle 3. Applicability

§ 11151. Applicability of This Division.

- (a) The provisions of this Division are applicable as of the effective date of this Division and shall not be interpreted to be retroactive.
- (b) Except as set forth in this Subsection, the provisions of this Division do not apply to recipients who do not provide services to the public as defined in Section 98010. Such recipients

shall comply with the regulations of the FEHCCRC and shall be deemed to be “employers” for purposes of such regulations. For purposes of such recipients, the regulations of the FEHCCRC with respect to “employees” or “applicants” shall be deemed to refer to “ultimate beneficiaries” as defined in Section 98010.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 11139 and 11139.5, Government Code.

Subchapter 7. Discrimination in Housing

Article 1. General Matters

§ 12005. Definitions.

As used in this subchapter, the following definitions shall apply:

(a) “Act” or “the Act” means the California Fair Employment and Housing Act, created by Government Code section 12900 et seq.

(b) “Adverse action” means action that harms or has a negative effect on an aggrieved person. The adverse action need not be related directly to the dwelling or housing opportunity forming the basis for the lawsuit or administrative complaint; for example, filing false allegations about a tenant with a tenant’s employer may constitute adverse action. Adverse action includes:

(1) In dwellings that are rented, leased, or otherwise made available for occupancy whether or not for a fee, adverse actions include:

(A) Failing or refusing to rent or lease real property, falsely representing to an applicant that a property is unavailable, failing or refusing to continue to rent or lease real property, failing or refusing to add a household member to an existing lease, reducing any tenant subsidy, increasing the rent, reducing services, changing the terms, conditions, or privileges, applying inferior terms, conditions, or privileges, refusing to make necessary repairs, setting additional financial conditions not imposed on all tenants, threatening to or actually filing false reports with tenant reporting agencies, unlawfully locking an individual out of, or otherwise restricting, access to all or part of the premises, harassment, termination, or threatened termination of tenancy, serving a notice to quit, filing an eviction action, evicting a tenant, refusing to provide a reasonable accommodation or reasonable modification, or engaging in any other discriminatory housing practice; or

(B) Refusing to complete forms, sign documents, allow inspections, comply with any public assistance, rental assistance, or housing subsidy program regulations, including refusing to make repairs to a housing accommodation to meet a governmental program’s habitability standards, or take other necessary steps to facilitate access to the housing accommodation; or

(C) Taking any action prohibited by California Civil Code sections 1940.2(a), 1940.3(b), 1940.35, or 1942.5(c) or (e), or Code of Civil Procedure 1161.4(a);

(2) Taking any action prohibited by Article 24 regarding the consideration of criminal history information;

(3) Refusing to sell a dwelling or residential real estate or otherwise failing or refusing to enter into a residential real estate related transaction;

(4) Refusing to provide financial assistance related to a dwelling or residential real estate; or

(5) Taking other action that has an adverse effect on an aggrieved person.

(c) “Aggrieved person” includes any person who:

(1) Believes they have been injured by a discriminatory housing practice; or

(2) Believes that they will be injured by a discriminatory housing practice that is about to occur.

(d) “Assistance animals” include service animals and support animals, as described in subsections (1) and (2) below. An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of an individual with a disability, or provides emotional, cognitive, or similar support that alleviates one or more identified symptoms or effects of an individual’s disability. See also, section 12185.

(1) “Service animals” are animals that are trained to perform specific tasks to assist individuals with disabilities, including individuals with mental health disabilities. Service animals do not need to be professionally trained or certified, but may be trained by the individual with a disability or another individual. Specific examples include, but are not limited to:

(A) “Guide dog,” as defined at Civil Code section 54.1, or other animal trained to guide a blind individual or individual with low vision.

(B) “Signal dog,” as defined at Civil Code section 54.1, or other animal trained to alert a deaf or hard-of-hearing individual to sounds.

(C) “Service dog,” as defined at Civil Code section 54.1, or other animal individually trained to the requirements of an individual with a disability.

(D) “Miniature horses” meeting the requirements of 28 CFR 35.136(i) (March 15, 2011) hereby incorporated by reference and 28 CFR 36.302(c)(9) (October 11, 2016) hereby incorporated by reference.

(E) “Service animals in training,” including guide, signal, and service dogs being trained by individuals with disabilities, persons assisting individuals with disabilities, or authorized trainers under Civil Code sections 54.1(c) and 54.2(b).

(2) “Support animals” are animals that provide emotional, cognitive, or other similar support to an individual with a disability. A support animal does not need to be trained or certified. Support animals are also known as comfort animals or emotional support animals.

(e) “Building” means a structure, facility, or portion thereof that contains or serves one or more dwelling units.

(f) “Business establishment” shall have the same meaning as in section 51 of the Civil Code. Business establishments include persons engaged in the operation of a business covered by section 51 of the Civil Code, insofar as the business is related to dwellings, housing opportunities, financial assistance, land use, or residential real estate-related activities. The term business establishment shall be broadly interpreted. For example:

(1) Entities engaged in the rental, sale, management, or operation of residential real estate, including common interest developments and mobilehome parks, constitute business establishments;

(2) Government bodies engaged in enacting legislation to implement governmental functions may not constitute business establishments; and

(3) Both nonprofit and for-profit organizations can constitute business establishments depending on the facts, but truly private social clubs not engaged in business activity are not business establishments.

(g) “Common use areas” means rooms, spaces, or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. Examples of common use areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, elevators, parking areas, garages, pools, clubhouses, dining areas, physical fitness areas or gyms, play areas, recreational areas, and passageways among and between buildings.

(h) “Complainant” means a person who files a complaint with the department alleging that the person has been aggrieved by a practice made unlawful by any law the department enforces and/or a person who files a civil action or counterclaim or raises an affirmative defense alleging that the person has been aggrieved by a practice made unlawful by any law the department enforces.

(i) “Criminal conviction” means a record from any jurisdiction that includes information indicating an individual has been convicted of a felony or misdemeanor.

(j) “Department” means the Civil Rights Department of Fair Employment and Housing.

(k) “Directly-related conviction” means a criminal conviction that has a direct and specific negative bearing on the identified interest or purpose supporting the practice.

(l) “Discriminatory housing practice” means an act that is unlawful under federal or state fair housing law, including housing-related violations of the Fair Employment and Housing Act, the federal Fair Housing Act, the Unruh Civil Rights Act, the Ralph Civil Rights Act, the Disabled Persons Act, and the Americans with Disabilities Act.

(m) “Dwelling unit” means a single unit of a housing accommodation for a family or one or more individuals.

(n) “Financial assistance” includes the making or purchasing of loans, grants, securities, or other debts; the pooling or packaging of loans or other debts or securities, which are secured by

residential real estate; or the provision of other financial assistance relating to the purchase, organization, development, construction, improvement, repair, maintenance, rental, leasing, occupancy, or insurance of dwellings, including:

- (1) Mortgages, reverse mortgages, home equity loans, and other loans secured by residential real estate;
- (2) Insurance and underwriting related to residential real estate, including construction insurance, property insurance, liability insurance, homeowner's insurance, and renter's insurance; and
- (3) Loan modifications, foreclosures, and the implementation of the foreclosure process.

(o) "Housing accommodation" and "dwelling" are synonymous and includes:

- (1) One or more dwelling units;
- (2) Any building, structure, or portion thereof that is used or occupied as, or designed, arranged, or intended to be used or occupied as, a home, residence, or sleeping place by one individual who maintains a household or by two or more individuals who maintain a common household, and includes all public and common use areas associated with it, if any, including single family homes; multi-family housing; apartments; community associations, condominiums, townhomes, planned developments, community apartment projects, and other common interest developments as defined in the Davis-Stirling Common Interest Development Act (known colloquially as homeowner associations (HOAs)); housing cooperatives, including those defined under Civil Code 4100(d); rooms used for sleeping purposes; single room occupancy hotel rooms and rooms in which people sleep within other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling; bunkhouses; dormitories, sober living homes; transitional housing; supportive housing; licensed and unlicensed group living arrangements; residential motels or hotels; boardinghouses; emergency shelters; homeless shelters; shelters for individuals surviving domestic violence; cabins and other structures housing farmworkers; hospices; manufactured homes; mobilehomes and mobilehome sites or spaces; modular homes, factory built houses, multi-family manufactured homes, floating homes and floating home marinas, berths, and spaces; communities and live aboard marinas; and recreational vehicles used as a home or residence.
- (3) Any building, structure, or portion thereof that is occupied, or intended to be occupied, pursuant to a transaction facilitated by a hosting platform, as defined in section 22590 of the Business and Professions Code, such as a website that enables property owners to list their spare room, apartment, or home for short term rentals.
- (4) Any vacant land that is offered for sale or lease for the construction of any housing accommodation, dwelling, or portion thereof as defined in subdivision (2); or
- (5) All dwellings as defined in and covered by the federal Fair Housing Act (42 U.S.C. § 3602(b)).

(p) “Housing opportunity” includes the opportunity to obtain, use or enjoy a dwelling, a residential real estate-related transaction, financial assistance in relation to dwellings or residential real estate, public or private land use practices in relation to dwellings or residential real estate, or other housing related privileges, services and facilities, including infrastructure or governmental services.

(q) “Includes” or “including” has the same meaning as “includes, but not limited to” or “including, but is not limited to.”

(r) “Interior” means the spaces, parts, components or elements of an individual dwelling unit.

(s) “Legitimate” means that a justification is genuine and not false or pretextual.

(t) “Military or veteran status” includes, regardless of duty status or discharge status, a member or former member of:

(1) The United States Armed Forces pursuant to 10 U.S.C. § 101(a)(4) (including the Army, Marine Corps, Navy, Air Force, Space Force, and Coast Guard);

(2) The United States Armed Forces Reserve pursuant to 10 U.S.C. § 101(c) (including the Army National Guard and the Air National Guard);

(3) The California National Guard (including the California Air National Guard, California Army National Guard, and California State Guard);

(4) Any person determined to be on active duty or formerly on active duty status pursuant to 38 U.S.C. § 106(a)(1), including Women’s Army Auxiliary Corps and Women’s Army Corps; and

(5) Any person determined by a court to be a former or current member of active military service.

(u) “Nondiscriminatory” means that the justification for a challenged practice does not itself discriminate based on a protected basis.

(v) “Owner” means any person having any legal or equitable right of ownership, possession or the right to rent or lease housing accommodations, including the following if they hold such rights:

(1) A lessee, sublessee, assignee, managing agent, real estate broker or salesperson;

(2) An offeror of a housing accommodation pursuant to a transaction facilitated by a hosting platform, as defined in section 22590 of the Business and Professions Code, such as a website that enables property owners to list their spare room, apartment or home for short term rentals;

(3) A trustee, trustee in bankruptcy proceedings, receiver, or fiduciary;

(4) Any person that is defined as a “housing provider” in a statute, regulation or government program or that is commonly referred to as a “housing provider” in the housing industry;

(5) The state and any of its political subdivisions and any agency thereof;

(6) Agencies, districts and entities organized under state or federal law, and cities, counties, and cities and counties (whether charter or not), and all political subdivisions and agencies thereof; and

(7) Governing bodies of common interest developments.

(w) “Person” or “persons” include:

(1) An individual or individuals;

(2) All individuals and entities that are included in the definition of “owner”;

(3) All individuals and entities that are described in 42 U.S.C. § 3602(d) and 24 C.F.R. § 100.20, including one or more individuals, corporations, partnerships, limited liability companies, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy proceedings, receivers, and fiduciaries;

(4) All institutional third parties, including the Federal Home Loan Mortgage Corporation, Fannie Mae, and any other entities that comprise the secondary loan market;

(5) Community associations, condominiums, planned developments, and other common interest developments, including those defined in the Davis-Stirling Common Interest Development Act (Civil Code section 4000 et seq.) (known colloquially as homeowner associations (HOAs));

(6) The state and any of its political subdivisions and any agency thereof; agencies, districts, and entities organized under state or federal law; and cities, counties, and cities and counties (whether charter or not), and all political subdivisions and agencies thereof;

(7) Any entity that has the power to make housing unavailable or infeasible through its practices, including government entities and agencies, insurance companies, real estate brokers and agents, and entities that provide funding for housing; and

(8) “Person” shall be interpreted broadly.

(x) “Practice” or “practices” includes the following, whether written or unwritten or singular or multiple: an action, failure to act, rule, law, ordinance, regulation, decision, standard, policy, procedure, and common interest development governing documents pursuant to Civil Code sections 4205, 4340-4370. Practice also includes “practices” as used in 24 C.F.R. Part 100.

(y) “Premises” means the interior or exterior spaces, parts, components, or elements of a housing accommodation, including individual dwelling units and the public and common use areas of a housing accommodation.

(z) “Private land use practices” include all non-governmental practices in connection with development and land use that are related to or have an effect on existing or proposed dwellings or housing opportunities including:

(1) Rehabilitation, transfer, conversion, demolition and development;

- (2) Regulations and rules governing use of property and the conduct or characteristics of its occupants;
- (3) Provision, denial of, or failure to provide infrastructure, services or facilities and land use that affect the feasibility, use or enjoyment of housing opportunities and existing and proposed dwellings;
- (4) Covenants, deed restrictions, and other conditions or constraints on transfer or use of property, whether or not recorded with a county; and
- (5) Other actions that make housing unavailable.

(aa) “Protected bases” or “protected classes” include race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, military or veteran status, age, medical condition, genetic information, citizenship, primary language, immigration status, arbitrary characteristics as protected by the Unruh Civil Rights Act, and all other classes of individuals protected from discrimination under federal or state fair housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes.

(bb) “Public land use practices” include all practices by governmental entities, as those entities are defined in subsections 12005(v)(5), 12005(v)(6), 12005(w)(6), and 12005(w)(67), in connection with development and land use that are related to or have an effect on existing or proposed dwellings or housing opportunities including:

- (1) Adoption, modification, implementation or rescission of ordinances, resolutions, actions, policies, permits, or decisions, including authorizations, denials, and approvals of zoning, land use permits, variances, and allocations, or provision or denial of facilities or services;
- (2) Other actions authorized under the California Planning and Zoning Law (Title 7 (commencing with section 65000)), California Redevelopment Law (Health & Safety Code section 33320 et seq.), “Redevelopment Dissolution Law” (Division 24, Parts 1.8, 1.85 and 1.87), the Ellis Act (Government Code section 7060), the Mobilehome Parks Act (Health and Safety Code section 18200 et seq.), the Special Occupancy Parks Act (Health & Safety Code section 18860 et seq.), the California Relocation Assistance Act (Government Code section 7260 et seq.), the Surplus Lands Act (Government Code section 54220 et seq.), State Housing Law (Health and Safety Code section 17910 et seq., Government Code section 65580 et seq.) and other federal and state laws regulating the development, transfer, disposition, demolition, and regulation of residential real estate or existing or proposed dwellings, and the provision of public facilities and services and other practices that affect infrastructure, municipal services and community amenities in connection with housing opportunities;
- (3) All practices that could affect the availability, feasibility, use, or enjoyment of housing opportunities;
- (4) Allocation, provision, denial of or failure to provide municipal infrastructure or

services, such as water, sewer, and emergency services, and other services, in connection with housing opportunities;

(5) Permitting of facilities or services that affect housing opportunities;

(6) Adoption, modification or implementation of housing-related programs, which include activities where a governmental entity, in whole or in part, owns, finances, develops, constructs, alters, operates, or demolishes a dwelling, or where such activities are done in connection with a program administered by, or on behalf of, a governmental entity, directly or through contractual, licensing, or other arrangements; and

(7) Other legislative, quasi-judicial, administrative, or other practices related to land use.

(cc) “Public use areas” means interior or exterior rooms or spaces of a building that are made available to the general public. Public use areas may be provided at a building that is privately or publicly owned.

(dd) “Residential real estate” means all real property, whether improved or unimproved, that includes or is planned to include dwellings, or is zoned or otherwise designated or available for the construction or placement of dwellings.

(ee) “Residential real estate-related transaction” includes:

(1) Providing financial assistance;

(2) Buying, selling, brokering or appraising of residential real estate; or

(3) The use of territorial underwriting requirements, for the purpose of requiring a borrower in a specific geographic area to obtain earthquake insurance, required by an institutional third party on a loan secured by residential real property.

(ff) “Respondent” means a person alleged to have committed a practice made unlawful by a law the department enforces and against whom a complaint has been filed with the department, against whom a civil action or counterclaim has been filed, or against whom an affirmative defense has been raised.

(gg) “Substantial interest,” for purposes of subsection 12062(a)(1), means a core interest of the entity or organization that has a direct relationship to the function of that entity or organization.

(hh) “Substantial purpose,” for purposes of subsection 12062(b)(1), means the purpose is integral to the non-business establishment’s institutional mission.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12948, 12955, 12955.6, 12955.8, 12956.1 and 12956.2, Government Code; and *Auburn Woods I Homeowners Ass’n v. Fair Employment and Housing Com’n* (2004) 121 Cal.App.4th 1578.

