

RULES AND REGULATIONS

GOVERNING PRACTICE AND PROCEDURE

before the

FAIR EMPLOYMENT PRACTICE COMMISSION

JOHN ANSON FORD, *Chairman*

ELTON BROMBACHER

C. L. DELLUMS

(Mrs.) CARMEN H. WARSCHAW

DWIGHT R. ZOOK



State of California

Edmund G. Brown, *Governor*

Department of Industrial Relations

John F. Henning, *Director*

Division of Fair Employment Practices

Edward Howden, *Chief*

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FAIR EMPLOYMENT PRACTICE COMMISSION

STATE AND NORTHERN CALIFORNIA OFFICE

455 Golden Gate Avenue
P. O. Box 603
San Francisco 1

SOUTHERN CALIFORNIA OFFICE

State Office Building No. 2
107 South Broadway
Los Angeles 12

CHAPTER 11. DIVISION OF FAIR EMPLOYMENT PRACTICES

DETAILED ANALYSIS

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19000. Definitions. (a) The term "act" as used herein shall mean the Fair Employment Practice Act, Division 2, Part 4.5 (commencing with Section 1410) of the Labor Code.

(b) The term "chairman" shall mean the chairman of the Fair Employment Practice Commission.

(c) The term "assigned commissioner" shall mean the member of the commission appointed by the chairman to take charge of a particular complaint or an investigation pursuant to provisions of the act.

(d) The term "complainant" shall mean the person by whom, or in whose behalf, a complaint is filed.

(e) The term "respondent" shall mean the person, employer, employment agency or labor organization against whom the complaint is made.

(f) The terms "person," "employment agency," "labor organization," "employer," "employee," and "commission," as used herein shall have the same meaning as set forth in the act.

NOTE: Authority cited for Chapter 11 (§§ 19000-19016): Sections 1419 and 1422, Labor Code. Adopting agency—Fair Employment Practice Commission.

History: 1. New Chapter 11 (§§ 19000 through 19016) filed 9-14-60; effective thirtieth day thereafter (Register 60, No. 20).

19001. Investigations Where No Complaint Has Been Filed.

(a) When it shall appear to the commission that an unlawful employment practice may have been committed, the chairman shall assign one of the commissioners to make prompt investigation in connection therewith. Such investigation shall be done with the assistance of the commission's staff.

(b) If the assigned commissioner determines after investigation that further action is warranted, he shall immediately endeavor to eliminate the unlawful discriminatory employment practice by conference, conciliation and persuasion.

(c) In the event such unlawful employment practice is not eliminated by conference, conciliation and persuasion, then the commission may refer the matter to the State Attorney General for such action as he deems appropriate.

(d) The commission or the assigned commissioner may issue subpoenas and subpoenas duces tecum, during any investigation where no

complaint has been filed, wherever necessary to compel the attendance of any party or witness at a time and place set by the commission or the assigned commissioner, or to require the production for examination of any books, payrolls, personnel records, correspondence, documents, papers, or other evidence relating to any matter under investigation. Issuance of said subpoenas and subpoenas duces tecum shall be in accordance with the provisions of the Code of Civil Procedure.

19002. Procedure. (a) Complaint.

(1) Any person claiming to be aggrieved by an alleged unlawful employment practice may, by himself or through his duly authorized representative, make, sign, and file with the commission a complaint in writing under oath.

(2) The State Attorney General may make, sign and file a complaint whenever he has reason to believe that any employer, employment agency, or labor union has engaged or is engaging in an unlawful employment practice.

(3) Any employer whose employees, or any of them, refuse or threaten to refuse to cooperate with the provisions of the act may file a written complaint under oath asking for assistance by conciliation or other remedial action.

(4) Any person claiming that he has been discharged, expelled, or otherwise discriminated against by an employer, labor organization, or employment agency because he has opposed practices forbidden under this act or because he has filed a complaint, testified, or assisted in any proceeding under the act may, by himself or his duly authorized representative, make, sign and file with the commission a complaint in writing under oath requesting remedial action.

(b) **Form and Filing.** The complaint shall be in writing, signed and verified by the complainant and filed with the commission. The complaint, where feasible, shall be upon forms prepared by the commission, blanks of which will be supplied by the commission upon request.

(c) **Contents.** A complaint shall contain the following:

(1) The full name and address of the complainant.

(2) The full name and address of the respondent or respondents.

(3) A plain and concise statement of the facts constituting the alleged unlawful employment practice or practices.

(4) The date or dates of the alleged unlawful employment practice or practices.

(d) **Time of Filing.** No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful employment practice or refusal to cooperate occurred; except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by an unlawful

employment practice first obtained knowledge of the facts of the alleged unlawful employment practice after the expiration of one year from the date of their occurrence.

(e) **Manner of Filing.** The complaint may be filed by the complainant, personally or through his duly authorized representative, either by personal delivery or by mail to an office of the commission. A copy of the complaint shall be served upon respondent when so requested by the respondent.

(f) **Withdrawal of Complaint.** A complaint, or any part thereof, may be withdrawn only on written consent of one or more commissioners, as hereinafter set forth, and upon such conditions as shall be deemed proper under all the circumstances.

If the request for withdrawal is made before the accusation has been filed, the consent of the assigned commissioner shall be obtained.

If the request for withdrawal is made after the accusation has been filed, the consent of the commission shall be obtained.

The request for withdrawal of the complaint shall be in writing and shall set forth the reasons for such request. The request to withdraw must be signed and verified by the complainant.

(g) **Amendments.** A complaint, or any part thereof, may be amended by complainant or his duly authorized representative with consent of the assigned commissioner at any time before hearing thereon, and thereafter at the discretion of the commission. The amended complaint shall be served upon respondent within a reasonable time, but not later than 10 days before hearing, when so requested by the respondent.

19003. Investigations. (a) **Reference.** After the filing of a complaint, the chairman of the commission shall assign one of the commissioners to make prompt investigation in connection therewith. Such investigation shall be done with the assistance of the commission's staff.

(b) **Dismissal of Complaint.** If after investigation of the complaint the assigned commissioner finds no violation of the act, he shall dismiss the complaint and in the event of such dismissal, the parties shall be notified thereof by certified mail with return receipt requested. Complainant shall be notified also of his right to appeal to the commission from such dismissal in accordance with Rule 19003(e).

(c) **Conference, Conciliation and Persuasion.** If the assigned commissioner determines after investigation that further action is warranted, he shall immediately endeavor to eliminate the unlawful discriminatory employment practice complained of by conference, conciliation and persuasion.

(d) **Conciliation.** If the assigned commissioner shall succeed in his endeavors at conference, conciliation and persuasion, at the appropriate time in the opinion of the assigned commissioner, he shall notify the parties by certified mail, return receipt requested, of the terms of

conciliation and of the complainant's right to appeal to the commission from the terms of conciliation in accordance with Rule 19003(e).

(e) **Appeal to the Commission.** The complainant may appeal to the commission the dismissal of his complaint by the assigned commissioner, or the terms of conciliation approved by the assigned commissioner, as the case may be. Such appeal must be in writing, state specifically the grounds upon which it is based and be filed within 30 days from the date of the mailing of the notice of disposition in the office of the commission where the complaint was previously filed.

If such appeal is made, the commission shall review the entire file, and may, in its discretion, hear the parties. The commission, in its discretion, shall grant or deny the appeal. If the commission grants the appeal, it shall remit the matter, together with its recommendations, to a commissioner for further action, if any. The assigned commissioner shall not vote in proceedings under this section.

(f) **Dismissal After Appeal.** If the decision of the assigned commissioner to dismiss a complaint or to approve the terms of conciliation is upheld after appeal by the complainant, then the commission shall enter said decision into the record as its final order or decision in the case.

19004. Issuance of Written Accusation. (a) In case of failure to eliminate an unlawful employment practice, or in advance thereof if in the judgment of the assigned commissioner, circumstances warrant, the assigned commissioner shall cause to be issued and served in the name of the commission, a written accusation, together with a copy of the complaint, as either or both may have been amended, requiring the respondent to answer the charges of such accusation at a hearing.

The accusation shall state the time and place of hearing, inform the respondent that he may file a written verified answer to the accusation and complaint, and that a failure to answer shall be deemed an admission of the allegations of the complaint and accusation. The accusation and verified complaint, as either or both may have been amended, shall be served by certified mail, return receipt requested, or by personal service on all parties at least 30 days before the date of the hearing. If a duly authorized representative has previously appeared on behalf of a party, a copy of the accusation and complaint, as either or both may have been amended, shall be furnished to said duly authorized representative. The accusation shall contain the charges on which the hearing is based, and the time and place of their occurrence.

(b) **Amendment of the Accusation.** The accusation may be amended as directed by the commission.

19005. Answer. (a) **Filing of Answer.** The respondent may by himself, or his duly authorized representative, answer the accusation. The answer shall be in writing signed by the respondent or his duly authorized representative, and filed with three copies at the office

of the commission within 15 days from the date of service of the accusation. A copy of the answer shall be transmitted to the complainant.

(b) **Contents.** The answer shall contain a general or specific denial of each and every allegation of the accusation controverted by the respondent or a denial of any knowledge or information thereof sufficient to form a belief and a statement of any matter constituting a defense. The answer shall contain the post office address and telephone number of the respondent.

(c) **Manner of Filing.** The answer may be filed by personal delivery, or by certified mail, return receipt requested, addressed to the office of the commission from which the accusation issued.

(d) **Failure to Deny or Admit.** Failure to deny or admit any allegation in the accusation, unless the respondent shall state in the answer that he is without knowledge or information sufficient to form a belief, shall be deemed an admission of such allegation.

(e) **Defense and New Matter.** Any allegation of new matter contained in the answer shall be deemed denied without the necessity of a reply.

(f) **Extension of Time for Filing.** Upon application, the chairman of the commission may for good cause shown extend the time within which the answer may be filed. Any extension in excess of 30 days must be approved by the commission.

(g) **Amendments.** The answer or any part thereof may be amended prior to public hearing, if any, without commission approval and thereafter in the discretion of the commission on application duly made therefor. An original with three copies of the amended answer shall be filed with the commission.

(h) **Amendment of Answer Upon Amendment of Accusation.** In any case where an accusation has been amended subsequent to the filing of the answer, the respondent shall have an opportunity to amend his answer within 15 days after service upon him of said amended accusation.

(i) **Failure to File Answer.** The commission may proceed, notwithstanding any failure of the respondent to file an answer within the time provided herein, to hold a hearing at the time and place specified in the accusation and may make its findings of fact and enter its order upon the testimony taken at the hearing.

(j) **Opening of Default.** Upon application, the commission may for good cause shown open a default to give respondent an opportunity to answer the accusation.

19006. Public Hearings. (a) **Acceleration of Hearing.** The parties to the proceedings may consent by written stipulation to a hearing within less than 15 days after the service of the accusation.

(b) **Presiding Officer.** The hearings may be conducted by a presiding officer sitting with the commission pursuant to Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code, and in such cases shall be the presiding officer.

(c) **Hearings.** All hearings of the commission under Section 1423 of the act shall be open to the public.

(d) **Motions and Objections at Hearing.** Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated orally and shall, with the rulings of the presiding officer, be included in the stenographic report of the hearing.

(e) **Motions Before and After Hearing.** All motions other than those made during a hearing shall be in writing stating briefly the order or relief applied for and the grounds for such motion. The original with two copies shall be filed with the presiding officer within three days after service thereof has been made on all parties. Answering statements, if any, shall be served on all parties and the original thereof with proof of service and two copies thereof shall be filed with the presiding officer within seven days after service thereof on all parties unless otherwise directed by the presiding officer. All motions shall be decided by the presiding officer without oral argument thereon unless the presiding officer shall determine to hear oral argument or take testimony in which event the presiding officer shall notify the parties of such fact and of the time and place for such argument and for the taking of such testimony.

(f) **Waiver of Objections.** Any objections not duly urged before the presiding officer, shall be deemed waived unless the failure or neglect to urge such objection shall be excused for cause by the presiding officer.

(g) **Joinder of Proceedings.** Two or more proceedings under the act may be joined by the commission in its discretion.

(h) **Powers and Duties of the Presiding Officer.** A presiding officer shall have full authority to control the procedure of a hearing; to admit or exclude testimony or other evidence; and to rule upon all motions and objections. The presiding officer shall make full inquiry into all the facts in issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues. The presiding officer may call and examine witnesses, direct the production of papers or documents, and introduce the same into the record of the proceedings.

(i) **Powers and Duties of the Commission.** The commission shall have full authority to render a decision after hearing, and may do so with the advice and counsel of the presiding officer. The assigned commissioner shall not participate in the hearing except as a witness, nor shall he participate in the deliberations of the commission in such case. All parties to a hearing may call, examine and cross-examine witnesses,

impeach witnesses and call rebuttal witnesses, and introduce papers, documents or other evidence into the record of the proceedings subject to the ruling of the presiding officer. The complainant shall be a party to the proceedings. He may appear at a hearing in person or by his duly authorized representative, and he may call, examine and cross-examine witnesses and introduce papers, documents, or other evidence into the proceedings subject to the rule of the presiding officer. Each respondent shall be a party to the proceedings. Any respondent may appear at a hearing in person or by his duly authorized representative, and he may call and examine witnesses, papers, documents, or other evidence into the proceedings subject to the rule of the presiding officer. All parties to the hearing may be represented by their duly authorized representative.

(j) **Presentation of Case Supporting the Accusation.** The case in support of the accusation shall be presented before the commission by one of the commission's attorneys or agents.

(k) **Evidence of Endeavors to Conciliate.** No testimony or evidence shall be given or received at any hearing concerning endeavors at conciliation.

(l) **Rights of Parties at Hearings.** All parties to a hearing may call, examine and cross-examine witnesses, impeach witnesses and call rebuttal witnesses, and introduce papers, documents or other evidence into the record of the proceedings, subject to the ruling of the presiding officer. All parties to the hearing may be represented by their duly authorized representative.

(m) **Intervention.** Any person having a substantial interest in the subject matter of any proceeding may petition for leave to intervene in such proceeding and may become a party thereto, if the commission finds that such person may be bound by the order to be entered in the proceeding or that such person has a legal interest which may not be adequately represented by existing parties, and that such intervention would not unduly broaden the issues or delay the proceedings. Except for good cause shown, no petition for leave to intervene will be entertained if filed less than 10 days prior to hearing. Service of said petition shall be made on all parties to the proceeding.

(n) **Stipulation.** Stipulations with regard to matters in issue may with the consent of the presiding officer be introduced in evidence.

(o) **Continuation of Hearings.** The commission may continue a hearing from day to day or adjourn it to a later day or to a different place by announcement thereof at the hearing or by appropriate notice.

(p) **Power of the Commission to Exclude Witnesses.** The commission may exclude from the hearing room or from further participation in the proceeding any person who continues to engage in improper conduct before them after having been given proper warning.

(q) **Waiver of Hearing.** With the consent in writing of the respondent and notice to all parties, an order may be entered without

holding any hearing or the making of any findings of fact or conclusions of law.

(r) **Oral Arguments or Briefs.** The commission shall permit the parties to submit oral arguments before them and to file briefs within such time limit as the presiding officer may determine. Oral arguments shall not be included in the stenographic report unless the commission shall so direct.

(s) **Application to Reopen a Hearing.** The commission on its own motion may, whenever justice so requires, reopen any matter previously closed by it, upon notice of such reopening being given to all parties. A complainant or respondent may, within 15 days after the commission's decision, for good cause shown, apply for the reopening of a previously closed proceeding. Upon application duly made, the commission in its discretion may reopen any matter previously closed where a decision was rendered upon default of a party affected thereby. In all cases the commission shall act upon the application for reopening within 30 days after its decision. If the commission does not act within 30 days after its decision, the application for reopening shall be deemed denied.

(t) **Withdrawal of the Accusation.** The accusation may be withdrawn at any time prior to the commission's final decision, either upon application by the assigned commissioner to the commission, or by the commission acting on its own initiative.

19007. Orders. (a) **Contents of Order.** An order of the commission issued after hearing shall set forth the findings of fact of the commission, its decision and, in its discretion, an opinion containing the reason for said decision.

(b) **Issuance of Orders.** If, upon all the evidence, the commission shall find that a respondent has engaged in an unlawful employment practice, it shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair employment practice, and to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership in any respondent labor organization, as in the judgment of the commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance. If, upon all of the evidence, the commission shall find that a respondent has not engaged in any unlawful employment practice, it shall state its findings of fact and shall similarly issue and file an order dismissing the accusation and complaint as to such respondent or respondents. The commission may obtain an order of court for the enforcement of its orders.

(c) **Filing of Orders.** All orders rendered after a hearing shall be filed at the office of the commission where the complaint was filed or processed and shall be open to public inspection during regular office

hours. A copy of its orders shall be delivered in all cases to the Attorney General, such other public officers as the commission deems proper, and all parties to the hearing.

(d) **Notice of Right to Review.** Any order issued by the commission shall have printed on its face references to Section 11523 of the Administrative Procedure Act which prescribe the rights of judicial review of any party to the proceeding to whose position the order is adverse.

19008. Witnesses. (a) **Examination of Witnesses.** Witnesses at all hearings shall be examined orally, under oath or affirmation, and a record of the proceedings shall be made by the commission. The proceedings at a hearing shall be recorded by a certified duly authorized stenographic reporter.

(b) **Subpoenas.** The commission, or any commissioner, may issue subpoenas either at its own instance or upon written application at the instance of a party to the proceeding whenever necessary to compel the attendance of witnesses and the introduction of books, records, correspondence, documents, papers or any other evidence which relates to any matter under investigation or in question before the commission or any member thereof.

(c) **Depositions.** Any commissioner on his own motion or on the written application of a party shall, whenever necessary or required in the course of his investigation or during the hearing and on such terms and conditions as he may determine, take or cause to be taken depositions of witnesses residing within or without the State, in the manner prescribed by law for depositions in civil actions.

(d) **Fees.** Where a subpoena is issued at the instance of a party to the proceeding other than the commission or a member thereof, the cost of service and witness and mileage fees shall be borne by the party at whose request the subpoena is issued. Such witness and mileage fees shall be the same as are paid witnesses in the superior court.

19009. Record of Proceedings. (a) **Record.** The record of the proceedings before the commission shall consist of the complaint and any amendments thereto, the accusation and any amendments thereto, the answer and any amendments thereto, notices of hearing, written applications, motions, orders, stenographic transcript of the record on the hearing, exhibits, depositions, the final order, and any additional documents as the commission may direct.

19010. Services of Accusations, Orders and Other Processes. (a) **Service of Process.** Accusations, answers, orders and other process and papers of the commission may be served personally, by certified mail, return receipt requested. The verified return of the individual serving the same, setting forth the manner of service, shall be proof of the same, and the return post office receipt when the service is by certified mail shall be proof of service.

(b) **Service by a Party.** Service of papers by a party to the proceeding shall be made by certified mail, return receipt requested, or in person. The verified return of the individual serving the same, setting forth the manner of service, shall be proof of such service. When service is by certified mail the return post office receipt shall be proof of service.

(c) **Service Upon Duly Authorized Representative.** If a party appears by duly authorized representative, all papers other than the accusation, notice of original hearings, and final decisions and orders may be served, as herein provided, upon such duly authorized representative with the same force and effect as though served upon the party.

19011. Certification. (a) The chairman or secretary of the commission, or such other person as may be designated by the commission, is authorized and empowered to certify all documents or records which are a part of the files and records of the commission.

19012. Advisory Agencies and Conciliation Councils. (a) The duties, functions and activities of advisory agencies or conciliation councils shall be consistent with the letter and spirit of the act, the rules and regulations pursuant thereto, and the policies and rulings of the commission. The commission has the power to create, appoint, reorganize or disband said agencies and councils, and to provide each with its constitution and bylaws, or to approve same.

19013. Posting of Act. (a) Every employer, employment agency and labor union subject to the act, shall post in a conspicuous place or places on his premises a notice to be prepared and distributed by the commission, which shall set forth excerpts of the act and such relevant information which the commission deems necessary to explain the act. Such notices may be obtained from the office of the commission.

19014. Amendment of Rules. (a) New rules and regulations may be adopted and any rule may be amended, or rescinded by the commission at a regular or special meeting, provided that at least three members are present and notice of the proposed adoption, amendment or rescission has been given to all members of the commission at least 15 days before the meeting at which action is to be taken, and provided that the provisions of the Administrative Procedure Act applicable thereto are followed.

19015. Availability of Rules. (a) The rules and regulations of the commission shall be available to the public at all offices of the commission.

19016. Construction of Rules. (a) These rules and regulations shall be liberally construed to secure a just, speedy, and inexpensive determination of the issues presented.