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AS OF NOV. 23, 1970,
THE FEP ACT ALSO PROHIBITS
DISCRIMINATION BASED ON SEX.

State of California

FAIR EMPLOYMENT PRACTICE ACT

(Chapter 121, Part 4.5, Division 2, Labor Code)

FEPC RULES AND REGULATIONS

GUIDE TO PRE-EMPLOYMENT INQUIRIES

FAIR EMPLOYMENT PRACTICE COMMISSION

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CONTENTS

	Page
California Fair Employment Practice Act	3
Rules and Regulations Governing Practice and Procedure before the Fair Employment Practice Commission	11
Guide to Lawful and Unlawful Pre-employment Inquiries by Employers, Employment Agencies, and Labor Organizations	23

CHAPTER 121

An act to add Part 4.5 (commencing with Section 1410) to Division 2 of, and to amend Section 56 of, the Labor Code, relating to prevention and elimination of practices of discrimination in employment and otherwise against persons because of race, religious creed, color, national origin, or ancestry, creating a State Commission on Fair Employment Practices, defining its functions, powers and duties, providing for the appointment and compensation of its officers and employees.

The people of the State of California do enact as follows:

SECTION 1. Part 4.5 (commencing with Section 1410) is added to Division 2 of the Labor Code, to read:

PART 4.5. FAIR EMPLOYMENT PRACTICES

1410. This part may be referred to as the "California Fair Employment Practice Act."

1411. It is hereby declared as the public policy of this State that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgement on account of race, religious creed, color, national origin, or ancestry.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for such reasons, foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advance, and substantially and adversely affects the interests of employees, employers, and the public in general.

This part shall be deemed an exercise of the police power of the State for the protection of the public welfare, prosperity, health, and peace of the people of the State of California.

1412. The opportunity to seek, obtain and hold employment without discrimination because of race, religious creed, color, national origin, or ancestry is hereby recognized as and declared to be a civil right.

1413. As used in this part:

(a) "Person" includes one or more individuals, partnerships, associations or corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(b) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(c) "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(d) "Employer," except as hereinafter provided, includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly; the state or any political or civil subdivision thereof and cities.

"Employer" does not include a social club, fraternal, charitable, educational or religious association or corporation not organized for private profit.

"Employer" does not include a person with respect to the person's employment of agricultural workers residing on the land where they are employed as farmworkers [, except that "employer" does include a person with respect to the person's employment of agricultural workers to reside on the land where they are employed which employment begins after September 18, 1965].

(e) "Employee" does not include any individual employed by his parents, spouse or child, or in the domestic service of any person in his home [; and it does not include agricultural workers residing on the land where they are employed as farmworkers].

(f) "Commission," unless a different meaning clearly appears from the context, means the State Fair Employment Practice Commission created by this part.

(g) "Affirmative actions" means any educational activity for the purpose of securing greater employment opportunities for members of racial, religious, or nationality minority groups and any promotional activity designed to secure greater employment opportunities for the members of such groups on a voluntary basis.

(Added by Stats. 1959, Ch. 121; amended by Stats. 1965, Ch. 1185, and by Stats. 1967, Ch. 1506, Ch. 1593.)

1414. There is in the Division of Fair Employment Practices the State Fair Employment Practice Commission. Such commission shall consist of seven members, to be known as commissioners, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and one of whom shall be designated as chairman by the Governor. The term of office of each member of the commission shall be for four years; provided, however, that of the commissioners first appointed two shall be appointed for a term of one year, one for a term of two years, one for a term of three years, and one for a term of four years. The term of office of each member of the commission appointed pursuant to the 1963 amendments to this section shall also be for four years; provided, however, that of the two commissioners first appointed pursuant to the said amendments, one shall be appointed for a term which shall expire September 18, 1966, and one for a term which shall expire September 18, 1967.

1415. Any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. Three members of the commission shall constitute a quorum for the purpose of conducting the business thereof.

The Governor shall also appoint a Chief of the Division of Fair Employment Practices, who shall be the principal executive officer of the commission.

1415.5. Proceedings conducted pursuant to this part are within the meaning of Section 11126 of the Government Code and the commission may conduct executive sessions subject to the provisions of Article 9 (commencing with Section 11120), of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

1416. Each member of the commission shall serve without compensation but shall receive fifty dollars ($50) for each day actually spent in the performance of his duties under this part and shall also be entitled to his expenses actually and necessarily incurred by him in the performance of his duties.

1417. Any member of the commission may be removed by the Governor for inefficiency, for neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon.

1418. The commission shall formulate policies to effectuate the purposes of this part and may make recommendations to agencies and officers of the state and local governments in aid of such policies and purposes.

1419. The commission shall have the following functions, powers and duties:

(a) To establish and maintain a principal office and such other offices within the State as the Legislature authorizes.

(b) To meet and function at any place within the State.

(c) To appoint an attorney, and such clerks and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(d) To obtain upon request and utilize the services of all governmental departments and agencies.

(e) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this part.

(f) To receive, investigate and pass upon complaints alleging discrimination in employment because of race, religious creed, color, national origin or ancestry.

(g) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the commission.

(h) To create such advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of race, religious creed, color, national origin, or ancestry, and to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population of the State and to make recommendations to the commission for the development of policies and procedures in general. Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

(i) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religious creed, color, national origin, or ancestry.

(j) To render annually to the Governor and biennially to the Legislature a written report of its activities and of its recommendations.

1419.5. The commission is empowered to prevent discrimination in housing as provided in Part 5 (commencing with Section 35700) of Division 24 of the Health and Safety Code.

1420. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, or ancestry of any person, to refuse to hire or employ him or to bar or to discharge from employment such person, or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(b) For a labor organization, because of the race, religious creed, color, national origin, or ancestry of any person, to exclude, expel or restrict from its membership such person, or to provide only second-class or segregated membership or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program because of the race, religious creed, color, national origin, or ancestry of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religious creed, color, national origin, or ancestry or any intent to make any such limitation, specification or discrimination.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this act or because he has filed a complaint, testified or assisted in any proceeding under this part.

(f) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

1421. The commission is empowered to prevent unlawful employment practices. When it shall appear to it that an unlawful employment practice may have been committed, the chairman of the commission shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation in connection therewith. If such commissioner determines after such investigation that further action is warranted, he shall immediately endeavor to eliminate the unlawful employment practice complained of by conference, conciliation and persuasion. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors.

Every member of the commission or its staff who discloses information in violation of the requirements of this section is guilty of a misdemeanor. Such disclosure by an employee subject to civil service shall be cause for disciplinary action under the State Civil Service Act.

1421.1. When contacted by the commission or its staff, employers, unions or employment agencies shall be informed whether a particular discussion, or portion thereof, constitutes either: (a) endeavors at conference, conciliation and persuasion which may not be disclosed by the commission or received in evidence in any formal hearing or court action; or (b) investigative processes, which are not so protected.

1422. Any person claiming to be aggreived by an alleged unlawful employment practice may file with the commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The Attorney General may, in like manner, make, sign and file such complaint. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this part may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

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.

Complaints alleging a violation of subdivision (c) of Section 1420 of this code shall be filed as provided in Section 3096 of this code.

1422.1. The commission shall cause any verified complaint filed under the provisions of this part to be served, either personally or by certified mail with return receipt requested, upon the person, employer, labor organization, or employment agency alleged to have committed the unlawful employment practice complained of. Service shall be made at the time of initial contact with said person, employer, labor organization, or employment agency or the agents thereof, or within 45 days, whichever first occurs.

1422.2. (a) The commission shall notify in writing a person, employer, labor organization, or employment agency, or the agents thereof, that they are being investigated under Section 1421, either at the time of initial contact or within 45 days, whichever first occurs.

(b) After a verified complaint has been filed under Section 1422 or a Section 1421 investigation has been commenced, and the preliminary investigation thereof has been carried out, or a 45-day period has elapsed from the filing of the verified complaint or the commencement of the Section 1421 investigation, if the preliminary investigation has not the been completed, an appropriate superior court may, upon motion of the respondent or party under investigation, order the commission to give to the respondent or party under investigation, within a specified time, a copy of any book, document, or paper, or any entries therein, in the possession or under the control of the commission, containing evidence relating to the merits of the verified complaint or the Section 1421 investigation, or to a defense thereto. The commission shall comply with such an order.

1423. After the filing of any complaint alleging facts sufficient to constitute a violation of any of the provisions of Section 1420, an investigation shall be made as provided in Section 1421 and, where warranted by the evidence, an attempt to eliminate such practice shall be made as provided in Section 1421, unless such attempt has previously been made.

In case of failure to eliminate such practice, or in advance thereof if in the judgment of the commissioner making the investigation, circumstances warrant, the latter shall cause to be issued and served in the name of the commission, a written accusation, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such accusation, hereinafter referred to as "respondent," to answer the charges of such accusation at a hearing.

1424. The written accusation, hearings, and all matters pertaining thereto shall be in accordance with the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code, and the commission shall have all the powers granted therein.

1425. The case in support of the accusation shall be presented before the commission by one of its attorneys or agents, and the commissioner who shall have previously made the investigation and caused the notice to be issued shall not participate in the hearings except as a witness and shall not give his opinion of the merits of the case nor shall he participate in the deliberations of the commission in such case; and the aforesaid endeavors at conciliation shall not be received in evidence.

(Added by Stats. 1959, Ch. 121; amended by Stats. 1965, Ch. 967.)

1426. If the commission finds that a respondent has engaged in any unlawful employment practice as defined in this part, the commission 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 unlawful 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 part, and including a requirement for report of the manner of compliance. If the commission finds that a respondent has not engaged in any such unlawful employment practice, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said accusation as to such respondent. A copy of its order shall be delivered in all cases to the Attorney General, and such other public officers as the commission deems proper.

Any order issued by the commission shall have printed on its face references to the provisions of the Administrative Procedure Act which prescribe the rights of appeal of any party to the proceeding to whose position the order is adverse.

1426.5. If, at any time during the proceedings described in this part, after a complaint has been served on a respondent, the complaint is withdrawn by the complainant or dismissed by the commission, or an investigation is terminated or closed by the commission, notice of

this fact shall be given to the respondent and the complainant without undue delay.

1427. The commission shall establish rules of practice not inconsistent with law to govern the foregoing procedure and its own actions thereunder.

1428. Every final order or decision of the commission is subject to judicial review in accordance with law.

1429. Whenever the commission believes, on the basis of evidence presented to it, that any person is violating or is about to violate any final order or decision issued by it pursuant to this part, the commission may bring an action in the Superior Court of the State of California against such person to enjoin him from continuing the violation or engaging therein or in doing anything in furtherance thereof. In such action an order or judgment may be entered awarding such temporary restraining order or such preliminary or final injunction as may be proper.

1430. Any person who shall willfully resist, prevent, impede or interfere with any member of the commission or any of its agents or agencies in the performance of duties pursuant to this part, or who shall in any manner willfully violate an order of the commission, shall be guilty of a misdemeanor, punishable by imprisonment in a county jail, not exceeding six (6) months, or by a fine not exceeding five hundred dollars ($500), or both.

1431. The Division of Fair Employment Practices may engage in affirmative actions with employers, employment agencies, and labor organizations in furtherance of the purposes of this part as expressed in Section 1411.

(Original 1431, now 1432. Present 1431 added by Stats. 1967, Ch. 1506.)

NOTE: Stats. 1967, Ch. 1506 also contained the following provision:

SEC. 5. The provisions of this act shall not be construed to promote employment upon a preferential or quota basis. Notwithstanding any other provision to the contrary, all information received by the commission pursuant to this act shall remain confidential and shall not serve as the basis for the filing of a complaint against any employer.

1432. The provisions of this part shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this act shall be deemed to repeal any of the provisions of the Civil Rights Law or of any other law of this state relating to discrimination because of race, religious creed, color, national origin or ancestry.

Nothing contained in this act shall be deemed to repeal or affect the provisions of any ordinance relating to such discrimination in effect in any city, city and county, or county at the time this act becomes effective, insofar as proceedings theretofore commenced under such ordinance or ordinances remain pending and undetermined. The respective administrative bodies then vested with the power and authority to enforce such ordinance or ordinances shall continue to have such power and authority, with no ouster or impairment of jurisdiction, until such pending proceedings are completed, but in no event beyond one year after the effective date of this act.

(Original 1432, now 1433. Present 1432, formerly 1431, added by Stats. 1959, Ch. 121; amended and renumbered by Stats. 1967, Ch. 1506.)

1433. If any clause, sentence, paragraph, or part of this part or the application thereof to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this part and the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved.

(Present 1433, formerly 1432; added by Stats. 1959, Ch. 121; amended and renumbered by Stats. 1967, Ch. 1506.)

SAN DIEGO STATE UNIVERSITY 1897

RULES AND REGULATIONS

Governing Practice and Procedure
before the
Fair Employment Practice Commission

CHAPTER 11. DIVISION OF FAIR EMPLOYMENT PRACTICES

DETAILED ANALYSIS

Section
19000. Definitions
19001. Investigations Where No Complaint Has Been Filed
19002. Procedure
19003. Investigations
19004. Issuance of Written Accusation
19005. Answer
19006. Public Hearings
19007. Orders
19008. Witnesses
19009. Record of Proceedings
19010. Services of Accusations
19011. Certification
19012. Advisory Agencies and Conciliation Councils
19013. Posting of Act
19014. Amendment of Rules
19015. Availability of Rules
19016. Construction of Rules

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 of 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 proceedings 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.

GUIDE TO LAWFUL AND UNLAWFUL PRE-EMPLOYMENT INQUIRIES

By Employers, Employment Agencies, and Labor Organizations

Under the California Fair Employment Practice Act

Purpose and Perspective

(See also Supplement, Page 29)

The California Fair Employment Practice Act, like other FEP laws, provides that no *pre-employment* inquiries or specifications, direct or indirect, may be made concerning a job applicant's race, religious creed, color, national origin, or ancestry. The Act does not otherwise limit the right of employers to seek full information about prospective employees or to establish the job-performance qualifications they consider essential. Whatever qualifications or standards are set, however, must be applied equally to all persons.

The California FEP Commission does not regard this limitation on pre-employment inquiries as a guarantee, of itself, against discriminatory hiring, but as one feature of the law which will help in this direction. Job application forms and interviews, help-wanted advertising, and union membership applications are mechanisms which may work for or against equal employment opportunity. They are regulated in all FEPC states substantially as set forth in this Guide.

This Guide is the product of extensive study of the law and of the needs and views of employers, unions, placement agencies, public administrators, minority groups, and others affected. In draft form it was widely disseminated for review and comment, after which certain revisions were made.

The following points will help to understand the Guide and to achieve constructive compliance with Section 1420 of the FEP Act:

- The lists of permitted and prohibited questions herein are *illustrative* of those often asked by employers in the past. They do not include all inquiries which may be lawful or unlawful.
- Unlawful inquiries are those to which the answers—whether or not so intended—would indicate in certain instances the race, religious creed, color, national origin, or ancestry of the job seeker.
- Except as otherwise provided in the Guide or Act, or through specific exemption by the Commission, it is a violation of the law to use, *prior* to employment, any question or specification herein designated unlawful, or similar question of the same effect. Exemptions based on government security regulations or bona fide occupational qualifications are covered in the last section of the Guide.

- The Guide pertains only to inquiries, advertisements, etc., directed to an applicant *prior to employment*. Once the applicant is on the payroll the employer may, if he wishes, enter otherwise prohibited information (e.g. photograph) in the individual's personnel file, provided such information is not used for any subsequent discrimination, as in upgrading or layoff. Note that employers who require proof of applicants' age or citizenship may not, *before* employment, inspect birth certificates, naturalization papers, or other such documents which indicate country of origin (and often race and religion); but may hire a person subject to his being able to produce, *on or after* reporting for work, such proof of age, citizenship, or other material facts.**
- A number of the unlawful inquiries will be seen to have little or no bearing on applicants' *race or religion*, but do touch, directly or indirectly, on *national origin or ancestry*—e.g. U. S. vs. foreign birth of applicant or his relatives. The law prohibits all such inquiries.
- No prohibited questions or statements may lawfully appear on pre-employment application or registration forms.

** See Supplement, Page 29.

LAWFUL PRE-EMPLOYMENT INQUIRIES	SUBJECT	UNLAWFUL PRE-EMPLOYMENT INQUIRIES
"Have you worked for this company under a different name?"	NAME	Former name of applicant whose name has been changed by court order or otherwise *
"Have you ever been convicted of a crime under another name?"		
Applicant's place of residence How long applicant has been resident of this State or city	ADDRESS OR DURATION OF RESIDENCE	
"Can you, after employment, submit a birth certificate or other proof of US citizenship or age?"	BIRTHPLACE	Birthplace of applicant Birthplace of applicant's parents, spouse or other relatives Requirement that applicant submit a birth certificate, naturalization or baptismal record * *
Requirement that applicant state his age and submit proof thereof in the form of a certificate of age or work permit "If hired, can you furnish proof of age?" /or/ Statement that hire is subject to verification of age at time of going on payroll	AGE	
	RELIGIOUS	Applicant's religious denomination or affiliation, church, parish, pastor, or religious holidays observed "Do you attend religious services /or/ a house of worship?" Applicant may not be told "This is a Catholic/Protestant/Jewish/atheist organization."
Statement by employer of regular days, hours or shift to be worked	WORK DAYS AND SHIFTS	
Color of applicant's eyes and hair	RACE OR COLOR	Complexion, color of skin, or other questions directly or indirectly indicating race or color

LAWFUL PRE-EMPLOYMENT INQUIRIES	SUBJECT	UNLAWFUL PRE-EMPLOYMENT INQUIRIES
Statement that photograph may be required after employment	PHOTOGRAPH	Requirement that applicant affix a photograph to his application form Request applicant, at his option, to submit photograph Requirement of photograph after interview but before hiring * *
"Are you a citizen of the United States?" "If you are not a US citizen, have you the legal right to remain permanently in the US? Do you intend to remain permanently in the US?" Statement by employer that if hired, applicant may be required to submit proof of citizenship	CITIZENSHIP	"Of what country are you a citizen?" Whether applicant or his parents or spouse are naturalized or native-born United States citizens Date when applicant or parents or spouse acquired US citizenship Requirement that applicant produce his naturalization papers or first papers * * Whether applicant's parents or spouse are citizens of the US
Languages applicant reads, speaks or writes fluently	NATIONAL ORIGIN OR ANCESTRY	Applicant's nationality, lineage, ancestry, national origin, descent or parentage Date of arrival in United States or port of entry; how long a resident Nationality of applicant's parents or spouse; maiden name of applicant's wife or mother Language commonly used by applicant. "What is your mother tongue?" How applicant acquired ability to read, write or speak a foreign language
Applicant's academic, vocational, or professional education; schools attended	EDUCATION	
Applicant's work experience Applicant's military experience in armed forces of United States, in a state militia (US), or in a particular branch of US armed forces	EXPERIENCE	Applicant's military experience (general)

LAWFUL PRE-EMPLOYMENT INQUIRIES	SUBJECT	UNLAWFUL PRE-EMPLOYMENT INQUIRIES
"Have you ever been convicted of any crime?" If so, when, where, and disposition of case?	CHARACTER	
Names of applicant's husband or wife, and minor dependent children Names of applicant's relatives already employed by this company "Do you live with your parents?" Names and address of parents or guardians of minor applicant	RELATIVES	Name or address of any relative of adult applicant other than applicant's spouse or children
Name and address of person to be notified in case of accident or emergency	NOTICE IN CASE OF EMERGENCY	Name and address of relative to be notified in case of accident or emergency
Organizations, clubs, professional societies, or other associations of which applicant is a member, excluding any the names or character of which indicate the race, religious creed, color, national origin, or ancestry of its members	ORGANIZATIONS	"List all organizations, clubs, societies, and lodges to which you belong"
"By whom were you referred for a position here?"	REFERENCES	Requirement of submission of a religious reference
Notice to applicant that any misstatements or omissions of material facts in his application may be cause for dismissal	MISCELLANEOUS	

EXCEPTIONS BASED ON GOVERNMENT SECURITY REGULATIONS

If any employer wishes an advisory opinion as to whether his firm or any part thereof is exempt on the basis of applicable security regulations established by the United States or the State of California, he may submit to the Fair Employment Practice Commission a written request for such opinion. Such request should include the following:

a. The provision(s) of Section 1420 as to which the advisory opinion is requested.

b. Explicit designation of the position(s), occupation(s), or groups of employees concerning which the advisory opinion is requested.

c. The particular inquiries, limitations, specifications, or information which the employer is required to make or secure in order to comply with said security regulations.

d. A complete statement of grounds, considerations, or reasons why the exemption is deemed necessary.

e. A written communication by the appropriate representative of the United States or State of California department or agency responsible for administering the said security regulation explicitly verifying the statements made by the employer in (b), (c) and (d) above, and providing a copy of or reference to the applicable security regulation.

Among pre-employment questions, only those bearing upon national origin, relatives in foreign countries, or similar matters, should be excepted under applicable security regulations; pre-employment inquiries as to race, religious creed, or color should not be made on this basis.

EXCEPTIONS BASED ON BONA FIDE OCCUPATIONAL QUALIFICATIONS

Any employer desiring an exemption under Section 1420 on the basis of bona fide occupational qualifications which he considers essential to a particular position or occupation shall file with the Fair Employment Practice Commission a written petition requesting a ruling permitting such exemption. The burden of establishing the justification for such exemption shall rest with the petitioner. Such petition shall include the following:

a. The provision(s) of Section 1420 from which the exemption is requested.

b. The position(s) or occupation(s) concerning which the exemption is requested.

c. The occupational qualifications or performance factors on the basis of which the exemption is requested.

d. A complete statement of any additional grounds on which the exemption is requested, and of all facts or considerations concerning the petitioner's employment situation which are relevant to the requested exemption.

ANY ADVISORY OPINION of the Commission as to exemption on the basis of government security regulations or ruling of the Commission as to exemption on the basis of bona fide occupational qualifications shall constitute a good-faith defense to any charge of violation of that portion of Section 1420 covered by such opinion or ruling, but only so long as and to the extent that there has been no misstatement, change, concealment, or omission of material facts by the petitioning employer. Any employer holding such opinion or ruling shall (a) promptly notify the Commission of any changes which occur in any of the pertinent security regulations, occupations or plants covered, or the qualifications, performance factors, or operations relating to such exemption; (b) make such opinion or ruling available for examination, upon request, to any applicant or employee in the position, occupation, or group of employees covered by it, or to any authorized representative of such applicant or employee.

Supplement (Clarifying Rulings)

* This does not mean that the employer may not ask other names under which the applicant has worked (for example, a married woman applicant's maiden name), if the employer must have such names in order to check educational or employment records or references.

** Documents such as birth certificates or naturalization papers, which reveal race and birthplace, and often religion, may not be required prior to hiring; likewise photographs or other evidence of race, religion, or national origin. The Commission has ruled that the point of hire is reached *once the employer has decided to hire the applicant and has so informed him.* When this point has been reached, the otherwise forbidden inquiries may be made. Thus any proof needed to support claims made by the applicant—e.g. as to U.S. citizenship, veteran status, age—may be inspected by the employer before the individual actually goes on the payroll. If the proof is lacking, the hire need not be consummated. In the case of public agencies which by law may certify only U.S. citizens for employment, the Commission has ruled that documents comprising proof of citizenship may be inspected at the time that eligible persons are certified by civil service or personnel authorities to hiring departments.

Among the publications available from FEPC:

PROMOTING EQUAL JOB OPPORTUNITY . . . YOU HAVE THE RIGHT . . . FEPC POSTER . . . A TEST FOR EMPLOYERS WHO TEST . . . FAIR PRACTICES NEWS (bi-monthly)

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