



Strengthening the Voice of Business



November 18, 2024

California Civil Rights Council
555 12th Street, Suite 2050
Oakland, CA 94607

Dear Chair Garcia and Mr. Kish:

The undersigned organizations—representing employers, human resources professionals, and technology companies—write to express our continued concerns about the Civil Rights Council’s (CRC) rulemaking on “automated decision-making” systems.

At the outset, we want to be clear: we share the Council’s objective. Discrimination

has no place in California's workplaces. California's robust anti-discrimination laws, together with federal law, protect workers and job applicants from discrimination, whether committed with a pen and paper or artificial intelligence. We are still concerned, however, that the CRC's proposal will have serious unintended consequences for the state's business environment and government operations, without commensurate benefits for Californians. Accordingly, we urge the CRC to reconsider its rulemaking. Should the Council move forward, we urge that it consider extended stakeholder engagement, including not only longer comment periods for these incredibly complex issues, but also informational sessions on specific issues that would allow experts to delve into topics more thoroughly.

While we appreciate some of the feedback that was taken in the most recent draft, we are still concerned that the CRC's proposal, as written, would deter public and private employers from using modern productivity enhancing technologies in the workplace and businesses—many based in California—from developing and offering them in the state. It would do so by dramatically expanding the scope of the Fair Employment and Housing Act (FEHA) by reclassifying businesses that develop or provide workplace software or any related services as “employment agencies” and “agents” that are subject to FEHA's private right of action. This would create significant legal uncertainty and unsettle longstanding employment practices.

In addition to the significant unintended consequences outlined above, the proposal is premature in several respects. First, the CRC's [notice](#) concludes that its rules will have no fiscal or economic impact on the state of California or businesses. A [competing proposal](#) before the state legislature, however, was estimated to cost hundreds of millions of dollars annually to implement, including tens of millions of dollars from the Civil Rights Department. Amidst a [fiscal state of emergency](#), we urge the CRC to conduct robust due diligence to accurately assess costs before proceeding.

Second, in the most recent legislative session, California lawmakers voted on numerous bills to regulate artificial intelligence, including proposals to combat “algorithmic discrimination.” Perhaps the most prominent of these, AB 2930 (Bauer-Kahan) ultimately failed to pass the Legislature but we fully anticipate the issue to continue debate into next year. The Governor vetoed another that would have created non-discrimination standards for state bodies using AI. Stakeholders with a broad array of perspectives constructively engaged in the legislative process. The CRC should avoid prematurely regulating on this issue while the Legislature and Governor are actively considering them.

Third, the CRC's proposal appears to conflict with the California Privacy Protection Agency's draft rulemaking on “automated decision-making tools,” which also covers employment decisions, as well as the spirit of the California Privacy Rights Act, due to its disproportionate recordkeeping requirements. It is worth highlighting the

significant potential for confusion if state agencies and departments have conflicting standards and get ahead of the Legislature and Governor on such matters of statewide importance. The Council's limited engagement with stakeholders' concerns significantly raises the risk of these conflicts coming about.

Combating workplace discrimination – again, whether committed with pen and paper or technology—is a serious matter. If the goal of these regulations is to recognize that algorithmic discrimination is discrimination under existing law, these regulations reach far beyond any such goal. Any change to California's robust anti-discrimination protections requires careful consideration and sustained engagement with stakeholders. Moving forward on a premature proposal risk diminishing California's competitive edge in emerging technologies, including artificial intelligence, and set back efforts to modernize state, county, and local information technology systems. Plainly put, California cannot afford to get this wrong. That is why it is particularly critical that the Legislature and Governor act first on any regulation of AI.

We look forward to working with you on this important matter.

Respectfully,

Alliance for Digital Innovation
BizFed
California Bankers Association
California African American Chamber of
Commerce
California Asian Chamber of Commerce
California Chamber of Commerce
California Credit Union League

California Hispanic Chambers of
Commerce
California Retailers Association
Consumer Data Industry Association
HR Policy Association
InternetWorks
Tech California
TechNet

CC:

The Honorable Gavin Newsom, Governor
The Honorable Robert Rivas, Speaker of the Assembly
Senator Mike McGuire, Senate President Pro Tempore