

FINAL STATEMENT OF REASONS

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD STAY OF ABATEMENT PROPOSED REGULATIONS Z-2015-1229-03

Title 8, Sections 362, 364 and 364.1 of the California Code of Regulations

UPDATE OF INITIAL STATEMENT OF REASONS

There are no modifications to the information in the Initial Statement of Reasons.

SUMMARY OF RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF JANUARY 15, 2016 THROUGH MARCH 3, 2016 AND PROVIDED ORALLY AT THE PUBLIC MEETING ON MARCH 3, 2016.

Written Comments

Jora Trang, Worksafe, via email dated March 2, 2016.

Comment #1:

Commenting on section 362 Abatement Period and Stay, Ms. Trang states that Worksafe believes that the proposed language “has the unintended effect of making all stays automatic, something that is not specified anywhere in the Labor Code. Thus, we believe that the term ‘are’ should be replaced with ‘may be’ in section 362(a)[.]” Worksafe extended its appreciation to the Appeals Board for preparing the proposals for review, and for taking into consideration its previous comments submitted in Spring of 2015.

Response:

The Board is in agreement with Worksafe that the language of section 6625, subdivision (a)(2) grants the Board discretion to stay, suspend, or postpone an order or decision during pendency of reconsideration, with certain exceptions as described in subdivision (b). The current section 362 was promulgated by the Board in 1992, when the Board chose to limit its discretion and grant stays in all instances. Rather than considering an amendment to this language at this juncture, the Board decided that it will address only the legislative mandate in AB 1634 to make specific regulatory changes to section 362. The Board decided to leave the issue of whether other changes are needed to provide additional exceptions beyond those stated in subdivision (b) for future consideration, which will require lengthier consideration and input from the stakeholder community.

Oral Comments

Jora Trang, Worksafe, at the public hearing on March 3, 2016.

Comment #1:

Ms. Trang commented that regarding section 362, nothing in the Labor Code stipulates an automatic stay. Rather than “must”, Worksafe proposes the term “may be”.

Response:

See response above.

Comment #2:

Ms. Trang asked what the Board meant by the last line of section 362, subdivision (a), which states “Pending reconsideration, the Board shall not order an employer to abate a citation which has been dismissed or vacated by Order or Decision of an Administrative Law Judge.”

Response:

Based on concerns and feedback received from stakeholders, the Board adopted this language in its pre-notice public discussions in order to clarify the intent of the regulation. The intent of this language is to make clear that abatement is not required after an Administrative Law Judge dismisses a citation, unless and until the Board reinstates the citation in a Decision After Reconsideration or other proceeding.

Comment #3:

Ms. Trang noted that there is an extra period (typo) in section 362 subdivision (b)(3).

Response:

We have fixed this clerical error in the final version of the regulations. The Board thanks Ms. Trang and Worksafe for their comments and participation throughout the rulemaking process.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed to the Board that would lessen any adverse economic impact on small business.

ADDITIONAL DOCUMENTS RELIED UPON

The internal statistics referred to under “Technical, Theoretical, and/or Empirical Study, Reports, or Documents” of the Initial Statement of Reason were not relied upon by the Board pursuant to Government Code section 11346.2(b)(3).

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None

DETERMINATION OF MANDATE

These proposed regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES DETERMINATION

The Board has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.