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February 3, 2015

DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833

RE: Comments to Proposed Regulations on AB 1634 (Skinner)

Dear Appeals Board and OSHAB Stakeholders,

We would like to extend our appreciation to the Appeals Board for preparing these proposals for our review. On behalf of Worksafe, we would like to submit the following comments on the proposed changes, deletions and additions to the Rules of Practice and Procedure with regard to AB 1634:

(1) Title 8 CCR §362 (b) (2) must mirror the statutory language of the bill regarding the employer's burden of proof (see Labor Code § 6319(b)).

AB 1634 requires an employer to demonstrate *by a preponderance of the evidence* that a stay or suspension of abatement will not adversely affect the health and safety of employees". Lab. Code § 6319(b). The proposed language in 8 CCR §362(b)(2) states: "the employer's written petition shall be accompanied by supporting declarations that set forth the evidence demonstrating a stay or suspension of abatement will not adversely affect the health and safety of employees."

This subsection of the regulation does not include the requisite statutory language regarding the employer's burden proof: "by a preponderance of the evidence." Although, subsection (d) includes a sentence about the employer's burden of proof, subsection (d) addresses the Board's discretionary ability to deny or grant the petition. The language regarding the employer's burden of proof must mirror the labor code and is better placed under subsection (b) (2), and should therefore read as follows:

"The employer's written petition shall be accompanied by supporting declarations that set forth *by a preponderance of the evidence* that a stay or suspension of abatement will not adversely affect the health and safety of employees."

(2) Title 8 CCR § 362 (b)(6) should include language that mirrors OSHAB's existing policies and procedures for responses to motions.

We appreciate the inclusion of this subsection with regard to the opposing party's opportunity to file an answer to the petition to stay or suspend abatement. This section specifies that the opposing party has 7 days from the service of the petition; however the OSHAB standard is to allow 10 days as seen in the following regulations:

- **8 CCR § 371(c)(2) Pre-hearing Motions:** "Any opposition to the motion shall be served and filed no later than *10 days* from service of the motion or request.";
- **8 CCR § 364(b) Withdrawal of Appeal:** "Any party may object to consolidation in writing within *10 days* of the date of service the order of consolidation."

- **8 CCR § 371.1 (c) Motions Concerning Hearing Dates:** “Any opposition to a motion for continuance shall be filed with the Appeals Board immediately but no later than *ten (10) days* from service of the motion.

Given the possibility of being served the petition at inopportune times and days, which may cut short the opposing party’s time for response, we feel that this subdivision should simply resemble all other OSHAB regulations that allow for 10 days.

Sincerely,



Nicole Marquez
Staff Attorney
Worksafe