

DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

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To: Stakeholders

From: California Occupational Safety and Health Appeals Board

RE: Stakeholder Meeting to be held on Thursday, March 5, 2015

Date: February 20, 2015

The Appeals Board will hold a stakeholder meeting to discuss a substantial number of changes, deletions and additions proposed for its Rules of Practice and Procedure. The meeting will be held on Thursday, March 5 at 10:00 a.m. at the Sacramento office, 2520 Venture Oaks Drive, Suite 300. There will also be a telephonic connection at the West Covina office at 100 North Barranca Street, Suite 410.

The Board strongly urges your attendance at this meeting or, alternatively, your written comments, as no other stakeholder meetings are contemplated at this time.

Attached is the text of the regulations, and below is a summary chart listing the rule and the current or proposed rule number. The list includes:

1. Changes required to be in compliance with AB 1634.
2. Changes additions and deletions required to use and manage the OASIS computer system planned for implementation in early 2016.
3. Improvements to current rules required to ensure consistency of adjudication efforts and changes in the way the Board will handle many of its cases.
4. Renumbering and other edits to correct consistency issues within the Rules of Practice and Procedure document.

We look forward to hearing your comments and concerns. If you have questions about any of the proposed regulations, please contact our Executive Officer, Kari Johnson at 916-274-5751, kajohnson@dir.ca.gov, or Industrial Relations Counsel Autumn Gonzalez at 916-274-5765, agonzalez5@dir.ca.gov

**Summary of Proposed OSHAB Regulations for Discussion
March 5, 2015 Stakeholder Meeting**

Where there is any discrepancy between these summaries and the text of the regulations as drafted, refer to the regulation.

Regulation	Description of Change
346 OSHAB Scheduling and Info System – OASIS	OSHAB’s doc mgmt., case mgmt., court calendar system is called OASIS. These regs (list) go into effect when OSHAB is up, until then the old regs apply.
346.1 Validity of Scanned Docs	Scanned docs are treated as the same as originals. Scans may be smaller, have a marker, do not impact the validity of the scan as evidence/valid doc. This is to allow the Board to accept scanned docs as part of OASIS.
346.2 Official Record and OASIS E-File	OASIS will be the official admin record, and the electronic docs will be the official records except for those oversized, demonstrative or other non-standard records that cannot be entered pursuant to 376.4. The Board still receives paper docs, but scans them into OASIS.
347 Definitions	Docketed- AB has rec’d certain info. “Electronic signature”, “Pleadings”. Updating definitions section for clarity and for OASIS.
348 Computation of Time	Add email as option.
350.3 Application of the Code of Ethics to Hearing Officers and ALJs	Applying the applicable portions of the California Code of Judicial Ethics to the ALJs/hearing officers of the OSHAB.
350.4 Self-Executing Order	Order that is effective immediately without the need of intervening or other type of implementing action.
352 Ex Parte Communications	No ex parte communications. If ex parte communications the ALJ will inform all parties. Update, add detail to explain to the ALJ what to do in the event of an ex parte communication, and clarify the ex parte communications rule.
355.1 Official Address of Record	AB will maintain official address records. Changes must be communicated to AB as soon as practical. Ensure OSHAB has best contact info, there is clarity in the rule.
355.4 Filing Docs with the AB	Party shall file docs by mail, personal service or electronic service. Docs that can be filed online. Explanation of OASIS for parties.
355.3 Service by Parties, Intervenors, Obligors and Reps	Service by Parties on other parties, may be by electronic means if parties stipulate.
355.2 Proper Method of Service by AB	Election of service by the AB to parties, including email. Proof of service (including by email).
355.5 Form and Size Requirements for Electronic Filed Docs	Electronic docs will meet these standards to be filed with OASIS .
355.6 Form and Size Requirements for Filed	Paper documents not submitted as evidence will meet these standards to be eventually scanned and submitted into the OASIS system

Paper Documents	
356 Notice of Appeal to Employees and Hearing	Cross-referencing number changes.
359 Filing of Appeal-Date	Appeal deemed filed on date the AB notified of intent to file via phone, writing or in person. If written, intent may be through sending appeal form through mail, hand delivery or e-filing the form when available. Inclusion of new OASIS filing options.
359.1 Appeal Form	Appeal docketed if info is submitted to the AB in accordance w/the regs in timely fashion. When docketed the parties will receive the docket #. Clarify what info constitutes a perfected appeal.
361.3 Issues on Appeal	Issues on appeal are limited to those arising out of the facts/allegations set forth in the Division's action and the facts in the appellant's statement of excuse/justification for the alleged violation. Er must specify which affirmative defenses it is raising which arise from the justification/excuse described.
362 Stay of Abatement	New law, Er may apply for a stay of abatement serious/willful
364 Withdrawal of Appeal	Allows withdrawal by employer by letter followed by Board ordering dismissal via executive office or ALJ; allows 30 day petition for reconsideration for affected employees based on fraud, misrepresentation, mutual mistake, or violation of board precedential decision; removes employer right to cancel withdrawal.
364.1 Withdrawal of All or Part of Division Action	Division may withdraw its action by motion or issuing Notice of Withdrawal of Citation.
364.2 Settlement Order	Division may dispose of citation by issuing a settlement order that is signed by the Employer and the Division, at any time after the Appeals Board has gained jurisdiction.
371 Prehearing Motions	Cross-referencing number changes.
371.1 Motions Concerning Hearing Dates	Cross-referencing number changes.
372.6 Proceeding to Compel Discovery	Simplifying and clarifying the proceeding to compel discovery section.
372.8 Discovery Completion and Conference	Discovery to be completed within 150 days. Discovery conference. Information not timely provided will be excluded.
372.9 Discovery; Exclusive Provisions	The discovery methods provided by the OSHAB regulations are the exclusive methods of discovery available in Board proceedings.
374 Prehearing Conference	In-person prehearing conference held between 90-180 days after appeal docketed. Issues, witnesses and non-testimonial evidence will be identified. Telephonic for non-serious cases unless otherwise requested.
376. Time and Place of Hearing	Cases including no serious, willful, or repeat citations may be scheduled differently than others.
376.1. Conduct of Hearing	Cross-referencing number changes.
376.4. Return of	Processes for larger and demonstrative exhibits that cannot be scanned

Exhibit	into the OASIS electronic file.
376.6 Confidential Evidence	Sealing of confidential evidence.
376.7 Hearing Recording	Parties may arrange for a court reporter at their own expense. Transcript may be recognized by the Appeals Board as the official record.
376.8 ALJ Preparation of the Hearing Record	Exhibits shall be lettered/numbered and stored in conformance with the regulation. Exhibits will be scanned into the electronic file.
376.9 Procedures for Order Sealing the Record	A party may request that certain sensitive evidence be sealed.
378 Representation at Hearing	Cross-referencing number changes.
380 Briefs	Post-hearing briefs limited to 15 pages unless otherwise requested by ALJ. ALJ may request pre-hearing briefs.
383 Failure to Appear	ALJ may dismiss for failure to appear at noticed events listed. Notice of intent to dismiss will first be served. Showing of good cause may be provided by the party.
392 Proof of Service During Reconsideration Process	Cross-referencing number changes.
392.4 Motions During Reconsideration Process	Cross-referencing number changes.
392.5 Availability of Recording Media	Parties may request copies of recorded hearing via email. The recording will be provided via digital recording, and may be provided via email.