

STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
NOTICE OF PROPOSED RULEMAKING ACTION

Prehearing and Hearing Regulations

The Occupational Safety and Health Appeals Board (“Appeals Board” or “Board”) proposes to adopt the proposed changes to regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Appeals Board will hold a public hearing on **October 7, 2026**, at its normally scheduled public meeting held at 2520 Venture Oaks Way, Suite 300 in Sacramento, CA 95833 at 9:30 am. The location is wheelchair accessible. The meeting will also be accessible to the public via Zoom at 100 North Barranca Street, Suite 410, West Covina, CA 91791, and via Zoom or telephonically. At the hearing any person may present statements orally or in writing relating to the proposed action described in the Informative Digest. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their comment at the hearing. The Board will also accept comments from the public via Zoom or telephonically.

To join the meeting, utilize the web address or telephone number below:

- Video-conference at <https://zoom.us/join> (Meeting ID 824 0177 9497)
- Teleconference: +1 669 900 9128 (Meeting ID 824 0177 9497)

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory actions to the Board. Comments may also be submitted by email to **KHalbo@dir.ca.gov**. The written comment period closes **on October 5, 2026**. The Board will consider only those comments received at the Board offices by that time. Written comments should be submitted to:

Karen Halbo, Staff Counsel
Cal/OSHA Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833

AUTHORITY AND REFERENCE

Labor Code (LC) section 148.7 authorizes the Board to adopt, amend, or repeal rules of practice and procedure pertaining to hearing appeals and other matters falling within its jurisdiction. The Board is charged with hearing and resolving appeals filed by employers for occupational safety and health citations issued by the Division of Occupational Safety and Health (Division).

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The Board initiates this rulemaking to modify its rules of practice and procedure regarding docketed appeals that move into the prehearing and hearing phases. The Board consists of three members appointed by the Governor and confirmed by the Senate. The Board hears and resolves appeals from private and public-sector employers regarding citations issued by the Division alleging violations of workplace safety and health laws and regulations. Appeals are initially held before an Administrative Law Judge (ALJ) appointed by the Board. If a party is dissatisfied with the ALJ's decision, a party may request reconsideration by the Board. The Board may also reconsider a matter on its own motion.

The Board proposes modifications to California Code of Regulations, title 8,¹ sections 370, 371, 371.1, 373, 374, 374.2, 374.3, 376, 378, and 383. These regulation sections concern prehearing and hearing rules of practice and procedure. The proposed modifications will clarify and make the Board's current practices in the prehearing and hearing phases of an appeal more transparent and understandable and may potentially increase the efficiency of its proceedings.

In section 370, the Board proposes to correct a statutory citation. In section 371, the Board proposes to add a cross-reference to a relevant section, add the term "written" in two places, and change when reply papers to a prehearing motion must be served and filed. In section 371.1 the Board proposes to add in the phrase "request or" in several places to allow a request to act as an alternative to the requirement of making a formal motion for a continuance, and to replace the term "formerly" with "previously." In section 373, the Board proposes removing language that required Board staff to send out various documents with a written explanation of the expedited process, as all of the stricken documents have already been sent to the parties. Also in section 373, the Board proposes striking language requiring that the prehearing conference be held within 60 days of the status conference and instead requiring that the prehearing conference be held during the 60 days before the hearing. The Board additionally proposes in section 373 adding in the option of an ALJ holding a "video" status or prehearing conference and clarifying that an ALJ may hold a hearing via telephone, video, in person, or some combination thereof within 150 days from the perfection of the appeal.

Although the ALJs already have the power to order prehearing conference statements, the Board proposes in section 374 to further clarify and delineate this power. The proposed changes clarify that the ALJs' have the power to order the parties to submit a prehearing conference statement, they have the power to specify the topics to be covered in a prehearing conference statement, and to specify that failure to prepare a prehearing conference statement when ordered to do so is grounds for the imposition of sanctions.

¹ All references will be to the California Code of Regulations, title 8 unless otherwise specified.

Although the ALJs already have the power to order status conference statements, the Board proposes in section 374.2 to further clarify and delineate this power. The proposed changes clarify that the ALJs' have the power to order the parties to submit a status conference statement addressing identified topics. In addition, the proposed rulemaking allows an ALJ to take a status conference off the calendar if the ALJ finds the status conference statements provide sufficient information such that the status conference is unnecessary. The proposed changes also specify that failing to prepare a status conference statement when ordered is grounds for sanctions.

In section 374.3, the Board proposes to clarify that a settlement conference may be conducted telephonically, via video conference, in person, or as otherwise directed by the ALJ.

The Board proposes in section 376 to clarify that the three-year delay on holding a hearing in an appeal begins when the Board receives notice of an investigation from the Bureau of Investigation or any prosecuting authority, and to clarify the ALJ may hold status conferences and hear and rule on motions during that three-year hiatus.

In section 378, the Board proposes to clarify that a written notice of representation can be filed at the Board's West Covina office as well as at the Sacramento office, and to move a clause to emphasize that a representative does not need to be an attorney. The Board also proposes in section 378 to require a representative withdrawing from representation of a party provide the Board with the most recent contact information the representative has for the party and, if available, contact information for the replacement representative. It further clarifies that a representative withdrawing from representation, along with filing a written notice with the Board, must serve that written notice of withdrawal on the other parties as well.

The Board proposes in section 383 to add a representative of a party, intervenor, or obligor to the list of those who can file a response opposing the reinstatement of any proceeding based on a non-appearing party's showing of good cause.

Anticipated Benefits of the Proposed Regulations

Anticipated Benefits of Proposed Revision to Section 370: The sole proposed change to this section of updating the statutory citation will clarify the meaning of the section, as the referenced section is still in effect but was moved to another portion of the Health and Safety Code since this regulation was promulgated.

Anticipated Benefits of Proposed Revisions to Section 371: The minor proposed changes will improve the overall clarity of the section by adding a helpful cross-reference to section 355.4 that sets out how to file documents with the Appeals Board and adding in the term "written" in two locations. It is anticipated that the changes that move the deadline for reply papers up from no later than 5 days before the hearing to no later than 5 days from the service of the opposition papers for prehearing motions or requests, other than a motion or request for a continuance, will be extremely beneficial. This proposed change will result in all of the papers related to a motion or request being

filed in the same general timeframe and allow the ALJ to rule on the motion or request more promptly. It is anticipated that prompt resolution of prehearing motions will clarify what issues remain to be determined at the hearing. Clarification of the issues remaining for determination at hearing will both make prehearing preparations more efficient and increase the number of pre-hearing settlements.

Anticipated Benefits of Proposed Revisions to Section 371.1: The proposed changes adding the terms “Requests or” and “Continuances” to the title of section 371.1 will align the language in the title with the proposed language corrections within the section and make the information in the section easier to locate when reviewing the titles of regulation sections in Article 3. Adding the term “request” makes the regulation section more understandable to small employers or laypersons. It is anticipated the proposed changes adding either the phrase “request or” or “requests or” as appropriate within the section will clarify that making a request is a valid alternative to making a motion and aligns the section with existing Board practice. It is anticipated that the minor proposed changes improving the consistency of the language within the section by add the term “Appeals” to references to the Appeals Board and replacing the word “formerly” with “previously” will increase the clarity of the section.

Anticipated Benefits of Proposed Revisions to Section 373: To reduce duplicative mailings and align the section with present Board practice, the Board seeks to remove the requirement that when serving the written explanation of the expedited process, Board staff must also re-send documents already served on the parties. The form presently used to set the date for a status conference now also contains a notice of the dates for a prehearing conference and the hearing, so the language is modified accordingly. It is anticipated that the addition of clarifying language about status conferences being conducted by telephone, video conference call, or in person, or some combination of those means, as determined by the ALJ, will align the section with present Board practice and provide stakeholders with advance notice of status conference attendance options.

The changes in section 373 revise the pre-hearing timeline to move the prehearing conference from 60 days after the status conference to within 60 days of the hearing, while retaining the outer limit of 150 days between when the appeal is perfected and the hearing must begin. Untethering the prehearing conference from having to occur with 60 days of the perfection of the appeal and tethering it instead to occurring within 60 days before the hearing improves the appeal process timeline. Using their power to regulate the proceedings granted in section 350.1, the ALJs have been making this change, and report that both they and the parties prefer having the prehearing conference held closer to the hearing. Moving the prehearing conference to later in the process provides more time for discovery disputes to resolve, for the parties to assess the strengths and weaknesses of their case and, if requested by the parties, attend a settlement conference. The proposed changes ensure that the ALJs’ rulings on evidentiary issues and any other matters decided at the prehearing conference occur within 60 days before the hearing. This will be an improvement over the present rules, which have resulted in rulings being made months before the hearing and essentially forgotten until the parties begin their hearing preparations, often just prior to the hearing itself. It is anticipated that rephrasing the sentence in subdivision (c)(4) will clarify its meaning so stakeholders better understand how the expedited timeframes set out in subdivision (c) (1) – (3) can be shortened.

Anticipated Benefits of Proposed Revisions to Sections 374 and 374.2: The changes to sections 374 and 374.2 will provide greater clarity and transparency to Board processes and clarify the ALJs' existing power to order the parties to prepare prehearing and status conference statements. It is anticipated that the changes to sections 374 and 374.2 will also clarify that ALJs have the power to impose sanctions if a party disobeys an order to prepare a prehearing and status conference statement. It is anticipated that the changes to section 374.2 will increase clarity and provide notice to stakeholders by listing several topics the ALJs frequently order the parties to address in prehearing conference statements.

Anticipated Benefits of Proposed Revisions to Section 374.3: The proposed changes will clarify that settlement conferences may be conducted, by telephone, by video conference, in person, or as otherwise directed by the ALJ, which aligns regulatory language with existing procedures, and provides notice to stakeholders about settlement conference attendance options.

Anticipated Benefits of Proposed Revisions to Section 376: The proposed changes will bring clarity to when the Board's three-year hiatus on holding a hearing begins if the Bureau of Investigations or any prosecuting authority reviews a matter that is the subject of an appeal. It will also clarify that an ALJ may still hold status conferences and hear motions during that three-year period. The minor change in the capitalization of the term "Section" to start with a lowercase "s" will make the capitalization of the term consistent with other sections in the Board's regulations.

Anticipated Benefits of Proposed Revisions to Section 378: The changes in subdivision (a) will clarify that a written notice of representation can be filed at either the Sacramento or West Covina office of the Board and will further emphasize that a representative does not need to be an attorney. It is anticipated that the changes in subdivision (d) will facilitate the Board being able to still contact parties and their replacement representatives after a representative withdraws from representation.

Anticipated Benefits of Proposed Revisions to Section 383: The change in subdivision (b) allows a party that has failed to appeal more time to request reinstatement of the appeal, increasing it from 10 days to 15 days. The change adding a representative of a party or obligor to the persons able to file a response to oppose the reinstatement of any proceeding based on a non-appearing party's showing of good cause will align the section with existing Board practice. It is anticipated that making it clear that a party or obligor may rely on a representative to file an opposition on their behalf under the described circumstances will reassure any party or obligor that takes the time to read the Board's regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Board has concluded that these changes related to the Board's rules of practice and procedure regarding docketed appeals are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that concern the Board's internal rules of practice and procedure concerning the prehearing and hearing phases of an appeal.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations to calculate potential cost impacts from the amendments to section 374 (prehearing conference statements) and section 374.2 (status conference statements): The ALJs presently order the submission of both prehearing and status conference statements on an “as needed” basis under the ALJs’ authority set out in 8 CCR section 350.1. The Board’s database does not track when ALJs order the parties to submit prehearing conference statements, but the Presiding ALJs report that prehearing conference statements are ordered infrequently. There is no reason to presume the proposal will change the rate at which the ALJs order the parties to submit prehearing conference statements. The Board database does not track when ALJs order the parties to submit status conference statements. However, the proposed changes could incentivize the ALJs to order the submission of status conference statements in more appeals, as a result of the changes clarifying the ALJs’ existing power to remove a status conference from the calendar if they are satisfied with the information provided in the status conference statements.

Further, during the last five years, approximately 98% of appeals filed with the Board resolved before the issuance of the Decision after hearing.² The Board’s database does not store information on appeals in a manner that the Board can determine when in the appeals process appeals are settled or ordered withdrawn. However, the ALJs report very few appeals settle or withdraw during the hearing or after the hearing before the Decision is issued. With 98% of appeals resolving before the hearing, it is reasonable to suppose that a considerable number of docketed appeals will resolve before the appeal reaches the point where the ALJ makes a determination whether it will be helpful to order the parties to submit a prehearing conference statement.

With these caveats, while the exact costs are unknown, they are not expected exceed the amounts specified below.

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: Potential costs generated by this proposal come from the changes to Section 374 concerning prehearing conference statements and Section 374.2, concerning status conference statements. The impact to the state must be calculated by examining the impact on the Division, which is a party for all docketed appeals, and on state agency Employers with docketed appeals. The proposed changes do not change the existing authority under which ALJs may presently order parties to submit prehearing and status conference statements, or order matters off calendar, and the Board is not anticipating the ALJs will change the frequency of when they issue such orders. The estimated costs calculated below present a highly unlikely and improbable ceiling, which is the highest amount of potential costs that could arise from the proposed changes.

Section 374 (Prehearing Conference Statement): Board staff estimates that on average, preparation of a prehearing conference statement should take approximately two hours. From 2022 to 2024,

² From 2020 to 2024, when the Board averaged 2,031 total docketed appeals, on average 1,979.8 appeals were resolved yearly by settlement order, an average 23.8 appeals were resolved yearly by an order granting withdrawal of appeal, and on average only 27.2 appeals yearly were resolved by the issuance of the Decision after hearing.

there were 747 prehearing conferences, resulting in an average of 249 prehearing conferences a year.³

From a random sample of a minimum of 10% of all noticed prehearing conferences for 2022, 2023, and 2024, the Board examined the underlying appeal records and counted the number of appeals in which the Division was represented by counsel (state attorney) or not (a district manager). In the 80 sampled cases spanning three years, the Division had legal representation in 65 appeals and was not represented by counsel when the prehearing conference was noticed in 15 appeals. $65 / 80 = 81\%$ (.8125, rounded down), and $15 / 80 = 19\%$ (.1875, rounded up).⁴

On average, there were 249 appeals per year where a prehearing conference was noticed from 2022 to 2024. The Board estimates that in 81% of those appeals, or 202 (201.69, rounded up), the Division was represented by counsel. The Board estimates that in 19% of those appeals, or 47 (47.31, rounded down), the Division was represented by district managers. The time cost associated with preparing a prehearing conference statement is calculated as the hourly wage, including the full cost of salary and benefits, of the preparer times the number of hours needed to prepare the prehearing conference statement. Using the hourly wage, including the full cost of salary and benefits, of \$81.60 for an state-employed attorney⁵ and \$113.96 for a district manager,⁶ the total yearly time cost for the Division to prepare prehearing conference statements is \$43,678.64, calculated as follows.

Division represented by counsel: $\$81.60 \times 2 \text{ hours} \times 202 = \$32,966.40$.

Division not represented by counsel: $\$113.96 \times 2 \text{ hours} \times 47 = \$10,712.24$.

The estimated total annual cost for prehearing conference statement preparation for the Division, assuming the ALJs always order the parties to submit prehearing conference statements: $\$32,966.40 + \$10,712.24 = \$43,678.64$.

³ The Board sends a notice of prehearing conference to schedule a prehearing conference with the parties. From the Board's internal database, in 2022 there were 343 prehearing conferences scheduled, in 2023 there were 224, and in 2024 there were 180 ($343+224+180=747$). The 3-year average is $747/3$, or an estimated yearly average of 249 prehearing conferences. A three-year average is being used because the Board moved to on-line hearings in 2021, resulting in 2022 being the first full year in which data was kept in the Board's internal database regarding when prehearing conferences were scheduled.

⁴ In 2022, when the prehearing conference was noticed, the Division had legal representation in 28 appeals and was not represented by counsel in 6 appeals, in 2023, the Division had legal representation in 17 appeals and was not represented by counsel in 7 appeals, and in 2024, the Division had legal representation in 10 appeals and was not represented by counsel in 2 appeals.

⁵ Per the CalHR Pay Scales, the Attorney (Class Code 5778) range A midpoint yearly salary = $(\$7,969 + \$10,473) / 2 = \$9,221$. Using 174 hours worked per month by a State worker, the Attorney hourly salary rate = $\$9,221 / 174 \text{ hours} = \52.99 . Accounting for benefits, the hourly wage, including the full cost of salary and benefits, for a State Attorney position = $\$52.99 \times 1.54 = \81.60 .

⁶ Using the CalHR Pay Scales, the District Manager (Class Code 3893) range A midpoint yearly salary = $(\$11,437 + \$14,315) / 2 = \$12,876$. Using 174 hours worked per month by a State worker, the District Manager hourly salary rate = $\$12,876 / 174 \text{ hours} = \74.00 . Accounting for benefits, the hourly wage, including the full cost of salary and benefits, for a DOSH District Manager position = $\$74.00 \times 1.54 = \113.96 .

From 2022 to 2024, there were 23 state agency employers with appeals noticed for prehearing conferences. Over those three years, state employers were represented by private counsel in 2 appeals, represented by attorneys who work for the state in 20 appeals, and by management personnel in 1 appeal. Dividing those numbers by 3 to obtain a one-year average, 1 state entity had private counsel (.66 rounded up), 7 had state attorney representation (6.66 rounded up), and 1 was unrepresented (.33 rounded down).

Using an hourly charge of \$400 per hour for a private attorney,⁷ and a wage of \$81.60 for a state-employed attorney as discussed above, the total yearly time cost for state agency employers to prepare prehearing conference statements is \$1,942.40, calculated as follows:

State agencies represented by private attorneys: $\$400 \times 2 \text{ hours} \times 1 = \800 .

State agencies represented by state attorneys: $\$81.60 \times 2 \text{ hours} \times 7 = \$1,142.40$.

On average, there were no appeals in which state agencies were not represented by counsel.

Annual costs to state agency employers for prehearing conference statement preparation, assuming the ALJs always order prehearing conference statements be submitted, is $\$800 + \$1,142.40 = \$1,942.40$

Assuming the ALJs always order the parties to submit prehearing conference statements (an unreasonable assumption that contradicts existing practice), the highest total estimated combined cost to state agencies, combining both the Division's costs and costs for state employers to prepare prehearing conference statements is $\$43,678.64 + \$1,942.40 = \$45,621.04$.

This \$45,621.04 yearly estimated total cost to the state must be viewed as a high ceiling. The actual cost will be considerably less. The Presiding Judges have observed that the ALJs rarely order parties to submit prehearing conference statements. To confirm this observation, the Board randomly sampled more than 10% of the total yearly appeals where a notice of prehearing conference was issued for 2022, 2023, and 2024, and in the sample, the ALJs ordered the parties to submit prehearing conference statements in only 2 appeals. The Board also polled the eight ALJs presently employed by the Board asking how many times they ordered parties to submit prehearing conference statements in 2022, 2023, and 2024, and the ALJs collectively reported ordering the parties to submit a prehearing conference statement in only 11 appeals.⁸

There is no reason to assume that after this proposal is adopted the ALJs will change how they manage prehearing conferences and begin ordering all parties to submit prehearing conference statements in every case. This proposal does not create new powers for ALJs but instead provides stakeholders with notice of the ALJs' existing authority to order parties to submit prehearing

⁷ The Board estimates the hourly rate for California attorneys, in metropolitan and urban areas, ranges from \$200 to \$600 per hour, with a mean rate of \$400 per hour.

⁸ Between January 1, 2022 and December 31, 2024, in 2022, a retired annuitant ALJ left; in 2023, in January an ALJ retired and a retired annuitant ALJ left the Board. The Board cannot determine whether the judges who are gone ever ordered parties to submit prehearing conference statements, but the information from presently-employed ALJs makes clear that such orders are rarely issued.

conference statements and lists common information requested in prehearing conference statements.

Section 374.2 (Status Conference Statement): Board staff estimates that on average, preparation of a status conference statement should take approximately 15 minutes. The estimated impact to the state must be calculated by estimating the impact on the Division, which is involved in all docketed appeals, and adding the estimated the impact on state agencies with docketed appeals.

From 2020 to 2024, the Division was party to all of the average yearly 2,019 docketed appeals but was not always represented by counsel, particularly during the early stages of an appeal when the first status conference is scheduled. When citations are appealed, district managers initially handle the appeal, pursuing abatement of violative conditions and negotiating settlements. Many appeals are resolved without a Division attorney ever becoming involved. When there is a need for legal representation, a letter is sent to the Division's Legal Unit requesting assignment of an attorney to the appeal. Request for legal assignment letters are filed with the Board and served on the parties to notify all of the change in the legal representative for the Division.

From 2022 to 2024, a random sample of 10% of all docketed appeals involving private employers showed that, on average, the Division was represented by counsel in 21% of all docketed appeals while in the remaining 79% of all docketed appeals the Division was represented by district managers. From 2022 to 2024, in appeals involving state and local agencies, on average, the Division was represented by counsel in 39% of appeals and represented by a district manager in 61% of state and local agency appeals. The Board averaged together the percentages gathered from the random sample of appeals involving private employers and from appeals involving state and local agencies, and determined the Division was represented by state attorneys in 30% of the appeals and was represented by a district manager in 70% of appeals. Applying those percentages to the 5-year average of total appeals, the Board estimates the Division will be represented by a state attorney in 606 appeals (2019*.30) and by a division manager in 1,413 appeals (2019*.70).

The time cost associated with preparing a status conference statement is calculated as the hourly wage, including the full cost of salary and benefits, of the preparer times the number of hours needed to prepare the prehearing conference statement. Using the hourly wage, including the full cost of salary and benefits, of \$81.60 for a state attorney and \$113.96 for a district manager, as discussed above, the total yearly time cost for the Division of preparing status conference statements is \$52,618.77, calculated as follows.

Division represented by counsel: $\$81.60 \times .25 \text{ hours} \times 606 = \$12,362.40$.

Division not represented by counsel, $\$113.96 \times .25 \text{ hours} \times 1,413 = \$40,256.37$.

The annual cost for status conference statement preparation for the Division, assuming the ALJs order a status conference statement be submitted only once during an appeal: $\$12,362.40 + \$40,256.37 = \$52,618.77$.

In the Board's internal database from 2020 through 2024, the five-year averages are that 2 state agency employers with docketed appeals were represented by private attorneys,⁹ 23 were represented by counsel and 6 were represented by management personnel.¹⁰

State agencies represented by private counsel: $\$400 \times .25 \text{ hours} \times 2 = \200

State agency employers represented by state counsel: $\$81.60 \times .25 \text{ hours} \times 23 = \469.20 .

State employers not represented by counsel: $\$113.96 \times .25 \text{ hours} \times 6 = \170.94 .

Annual total cost for status statement preparation for state agency employers, presuming the ALJs order the parties to submit a status conference statement once over the course of an appeal, would be $\$200 + \$469.20 + \$170.94 = \840.14 .

The total annual cost to all state agencies is estimated by combining both the Division's costs and costs for state agency employers to prepare status conference statements once during the course of an appeal: $\$52,618.77 + \$840.14 = \$53,458.91$.

This \$53,458.91 yearly estimated cost must also be viewed as a ceiling. The actual cost will be less, due to both the existing practice of ALJs rarely ordering parties to submit status conference statements, and because some cases included in the estimate will settle before a status conference is held. It is not anticipated that after this proposal is adopted, the ALJs will change how they manage status conferences and begin ordering all parties to submit status conference statements in every case. This proposal does not create new powers for ALJs but instead provides stakeholders with notice of the ALJs' existing authority to order the parties to submit status conference statements and makes clear that the ALJs can take a status conference off calendar if they are satisfied with the information provided by the parties in their statements.

Total additional expenditures for the current state fiscal year: \$45,621.04 (the Division's costs + state agency employers' costs to prepare prehearing conference statements) and \$53,458.91 (the Division's costs + state employers' costs to prepare status conference statements), which together equals \$99,079.95.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: The local government expenditures required under these proposed regulations are not reimbursable by the State for reasons other than those listed in section 17556 of the Government Code. These regulations impose requirements that apply generally to all individuals and agencies in the state; they do not impose any requirements unique to local governments. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-58.

Other nondiscretionary cost or savings imposed on local agencies: From 2020 to 2024, out of the average 2,019 yearly docketed appeals, an average of 65 docketed appeals were filed by local

⁹ Within the average 26 state agencies represented by counsel, 7%, or 1.82, were represented by private firms, so the Board is assuming for cost calculations that 2 state agencies are represented by private counsel.

¹⁰ This can include personnel working in human relations, safety, or other management occupations.

agency employers each year. The estimated yearly time cost for local agencies to submit prehearing and status conference statements is \$7,327.78, as detailed below.

Amendments to section 374 (prehearing conference statements): Board staff estimates that on average, preparation of a prehearing conference statement should take approximately two hours. From 2022 to 2024, on average, 249 prehearing conferences were held each year. Over the three years for which the Board has data, 11 of the local agencies were represented by private counsel, 9 of the local agencies were represented by in-house counsel, and 2 of the local agencies were not represented by counsel at the time of the issuance of the notice of prehearing conference. Dividing these numbers by three to get a one-year average, 4 ($11/3 = 3.66$, rounded up), local agencies were represented by private counsel, 3 ($9/3 = 3$) were represented by in-house counsel, and 1 ($2/3 = .67$) local agency was unrepresented.

The time cost associated with preparing a prehearing conference statement is calculated as the hourly wage, including the full cost of salary and benefits, of the preparer times the number of hours needed to prepare the prehearing conference statement.

Using an hourly rate of \$400 for a private attorney as discussed above, and an hourly wage, including the full cost of salary and benefits, of \$146 for an in-house county counsel, city attorney, or general counsel and \$109.48 for a manager,¹¹ the total time cost to local entity employers for preparing a prehearing conference statement is \$4,294.96, calculated as follows.

Local agencies represented by private counsel: $\$400 \times 2 \text{ hours} \times 4$ (number represented by private counsel) = \$3,200.

Local agencies represented by in-house counsel: $\$146 \times 2 \text{ hours} \times 3$ (number represented by in-house counsel), which is \$876.00.

Unrepresented local agencies: $\$109.48 \times 2 \text{ hours} \times 1$ (number unrepresented), which is \$218.96.

Yearly estimated costs for local agencies to submit prehearing conference statements is $\$3,200 + \$876.00 + \$218.96 = \$4,294.96$.

Amendments to section 374.2 (status conference statements): Board staff estimates that on average, preparation of a status conference statement should take approximately 15 minutes, or .25 hours. From 2020 to 2024, on average, there were 66 local agency docketed appeals a year. On average, the local agencies in 15 of the docketed appeals ($77/5 = 15.4$, rounded down) were represented by private counsel, in 15 of the docketed appeals ($73/5 = 14.6$, rounded up) were

¹¹ The U.S. Bureau of Labor Statistics reports the average hourly wage rate is \$102.82 for California attorneys and \$77.10 for management occupations. [Source: U.S. Bureau of Labor Statistics, May 2023 State Occupational Employment and Wage Estimates California. Navigate to https://www.bls.gov/oes/2023/may/oes_ca.htm and scroll down to the appropriate row in the table]. Wages are computed by scaling up the average wages by a factor of 1.42 to account for benefits. [The scaling factor of 1.42 is calculated based on the ratio of total benefits to average wages and salaries of private industry workers for the Pacific Census region (which includes California). In 2023, total benefits averaged \$14.16 and wages and salaries averaged \$33.97, for a ratio of 0.42.] The Board is using an hourly wage, including the full cost of salary and benefits, of \$146 for in-house counsel and \$109.48 for a manager.

represented by in-house counsel, and in 36 of the docketed appeals ($179/5 = 35.8$, rounded up) the local agencies were represented by management personnel.

As discussed above, the time cost associated with preparing a status conference statement is calculated as the hourly wage, including the full cost of salary and benefits, of the preparer times the number of hours needed to prepare the status conference statement. As described above, using an estimated hourly wage of \$400 for a private attorney, an hourly wage, including the full cost of salary and benefits, of \$146 for an in-house counsel and of \$109.48 for a manager as discussed above, the total time cost of preparing a status conference statement for local agencies is \$3,032.82, calculated as follows.

Local agencies represented by private counsel: $\$400 \times .25 \text{ hours} \times 15$ (average number represented by private counsel), which is \$1,500.

Local agencies represented by in-house counsel: $\$146 \times .25 \text{ hours} \times 15$ (average number represented by in-house counsel), which is \$547.50.

Unrepresented local agencies: $\$109.48 \times .25 \text{ hours} \times 36$ (average number unrepresented), which is \$985.32.

Yearly estimated costs for local agencies to submit status conference statements is $\$1,500 + \$547.50 + \$985.32 = \$3,032.82$.

The estimated combined average yearly cost of submitting prehearing and status conference statements for local agencies is $\$4,294.96 + \$3,032.82 = \$7,327.78$.

In total, the estimated combined average yearly cost of submitting prehearing and status conference statements for local agencies is $\$4,294.96 + \$3,032.32 = \$7,327.78$.

Cost or savings in federal funding to the state: None

Cost impacts on a representative private person or business: The estimated total yearly cost for private businesses to submit prehearing and status conference statements is \$279,186.65 as detailed below. The costs for a representative business to submit prehearing and status conference statements is between \$218.96 ($\$109.48 \times 2 \text{ hours}$) and \$800 ($\$400 \times 2 \text{ hours}$) for each statement required, based on the figures provided below.

Amendments to Section 374: Board staff estimates that on average, preparation of a prehearing conference statement should take approximately 2 hours. From 2022 to 2024, on average, 249 prehearing conferences were noticed each year.¹² From that yearly average number of prehearing conferences, on average of 15 appeals a year involved state and local agencies,¹³ so for estimating the economic impact to private employers, the Board must remove the average yearly appeals from

¹² As explained above, a 3-year average is being used because the Board moved to on-line hearings in 2021, making 2022 the first full year in which data was kept on the appeals in which a prehearing conference was held.

¹³ From the Board's internal database, from 2022 to 2024, 45 prehearing conferences total involved state or local agencies. Thus, on average, 15 of the prehearing conferences each year involved appeals filed by local and state agencies.

state and local agencies from the average yearly prehearing conferences noticed, yielding an yearly average of 234 noticed prehearing conferences involving private employers.

The time cost associated with preparing a prehearing conference statement is calculated as the fully loaded hourly wage of the preparer, times the number of hours needed to prepare the prehearing conference statement. On average, 86%, or 201 private employers a year are expected to pay a private attorney to prepare the prehearing conference statement¹⁴ while 14% or 33 unrepresented private employers a year will prepare the prehearing conference statement themselves.¹⁵

As described above, using an estimated hourly rate of \$400 for a private attorney, and an hourly wage, including the full cost of salary and benefits, of \$109.48 for a manager as discussed above, the total yearly time cost for all private employers to prepare a prehearing conference statement is \$177,701.52, calculated as follows.

Represented private employers: $\$400 \times 2 \text{ hours} \times 212 = \$169,600$.

Unrepresented private employers: $\$109.48 \times 2 \text{ hours} \times 37 = \$8,101.52$.

The total estimated yearly cost to private employers for preparing prehearing conference statements: $\$169,600 + \$8,101.52 = \$177,701.52$.

As covered in the section regarding costs to state entities above, this \$177,701.52 yearly cost to private employers must be viewed as a high ceiling, and the actual costs will be considerably less.

Amendments to Section 374.2: Board staff estimates a status conference statement should take, on average, approximately 15 minutes to prepare. Of the 10,095 total appeals docketed from 2020 through the end of 2024,¹⁶ 484 were filed by state and local agencies.¹⁷ Thus, on average, 97 (96.6 rounded up) appeals are filed by state and local agencies each year. The Board estimates that it can expect an average of 2,019 (10,095/5) docketed appeals a year, with on average 97 appeals filed by state and local agencies. Therefore, on average the Board expects 1,922 docketed appeals to be filed by private employers (removing from the 2019 average yearly docketed appeals the estimated 97 average yearly docketed appeals filed by state and local agencies).

From a 10 percent or larger random sample of private businesses' docketed appeals for each year from 2020 to 2024, on average, 35%, or 353 out of a sample of 1,014 private employers are

¹⁴ Some of the attorneys representing private businesses for the prehearing conference were in-house counsel, not private attorneys. However, for the efficiency of these calculations the Board is treating all attorneys representing private businesses as if they charged the higher, private attorney rate for legal work.

¹⁵ The Board took a random sample of 10% or more of the total appeals by private employers that proceeded to notice of a prehearing conference from 2022 to 2024, and out of the sample, 69 of 80 were represented by attorneys, which is 86.25%, rounded down to 86%. For the other 11 out of 80 appeals, or 13.75%, rounded up to 14%, the business owner or personnel working in human relations, safety, or other management occupations represented the business. $86\% \text{ of } 233 = 200.38$, rounded down to 200 and $14\% \text{ of } 233 = 32.62$, rounded up to 33%.

¹⁶ The sum of the total docketed appeals for each year from 2020 to 2025, $2154 + 1211 + 2663 + 2448 + 1619 = 10,095$.

¹⁷ From 2020 to 2025, there were 158 state entity and 326 local entity appeals yielding a total of 484 such appeals. $484 / 5 = 96.8$, which the Board rounded up to 97.

expected to pay an attorney to prepare the prehearing conference statement while 65% or 661 out of a sample of 1,014 unrepresented private employers will prepare the status conference statement themselves, or use personnel working in human relations, safety, or other management occupations. Applying those percentages to the estimated yearly average number of private employers with docketed appeals, 35% of 1,922 or 673 (672.2, rounded up) private employers will have legal representation, and 65% of 1,922, or 1,249 (1,249.3 rounded down) private employers will not have counsel.

As discussed above, the time cost associated with preparing a status conference statement is calculated as the hourly wage, including the full cost of salary and benefits, of the preparer times the number of hours needed to prepare the status conference statement. Using an hourly rate of \$400 for a private attorney and an hourly wage, including the full cost of salary and benefits, of \$109.48 for a manager, the yearly time cost of preparing a status conference statement for all private employers is \$101,230.39, calculated as follows.

Represented private employers: $\$400 \times .25 \text{ hours} \times 673 = \$67,300$

Unrepresented private employers: $\$109.48 \times .25 \text{ hours} \times 1,249 = \$34,185.13$

Total estimated yearly cost for private employers to prepare status conference statements is $\$67,300 + \$34,185.13 = \$101,485.13$.

The annual total cost to private employers from the proposed changes is based on the assumption, both unprecedented and highly unlikely, that after the passage of this rulemaking the ALJs will exercise their discretion to order the parties to submit prehearing conference statements for every prehearing conference and status conference. However, using those assumptions, the estimated annual total cost is: $\$177,701.52$ (estimated cost of preparing prehearing conference statements) + $\$101,485.13$ (estimated cost of preparing status conference statements) = $\$279,186.65$.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None, because under section 350.1, the ALJ's already have to power to require parties to file status conference statements and prehearing conference statements, and to cancel or reset status conferences. The proposed changes to the regulations simply clarify the ALJs' existing powers and state the information customarily required and issues to be covered when an ALJ orders the parties to submit prehearing conference statements.

Effect on Small Business: California Government Code § 11346.3 defines small businesses as businesses with fewer than 100 employees that are not dominant in their field and are independently owned and operated. Based on the California Employment Development Department's (EDD) Size of Business Data for the second quarter of 2025 (the most recent data), 1,897,911 total business have fewer than 100 employees.¹⁸ The proposed regulatory revisions

¹⁸ Based on the EDD's Size Data for California (Quarterly). Navigate to [Size Data for California \(Quarterly\)](#), in the third row of the chart which is labeled "Payroll and Number of Businesses by Size of Business – Classified by

will clarify the Board's policies and procedures and potentially make the appeal process simpler for smaller employers.

Results of the Economic Impact Analysis

The Board concludes that it is (1) unlikely that the proposed regulations will either create or eliminate any jobs in the State of California; (2) unlikely that the proposed regulations will lead to the creation of new businesses or the elimination of existing businesses within the State of California; and (3) unlikely that the proposed regulations will lead to the expansion of businesses currently doing businesses within the state of California.

Benefits of the Proposed Action: The proposed procedural amendments are not anticipated to have an impact on the health and welfare of California residents and the state's environment. However, the procedural amendments benefit worker safety by clarifying the Board's administrative process generally, which helps achieve the purpose of the Occupational Safety and Health Act which benefits the public.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or 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.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Karen Halbo, Staff Counsel
KHalbo@dir.ca.gov
Cal/OSHA Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Phone Number: (916) 274-5756

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Halbo at the above address.

Industry (Table 2A)" in the column for 2025, click on the Qtr 2 link. The sum of the number of businesses with fewer than 100 employees, $1,462,053 + 177,687 + 129,835 + 92,945 + 35,391 = 1,897,911$.

The designated backup contact person to whom inquiries may be made is Aaron R. Jackson, and inquiries may be made to

Aaron R. Jackson, Chief Counsel
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Cal/OSHA Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Phone Number: (916) 274-5769

AVAILABILITY OF STATEMENT OR REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Ms. Halbo at the contact information listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Halbo at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Halbo at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikethrough can be accessed through our website at <https://www.dir.ca.gov/oshab/Rulemaking.htm>