

### §376. Time and Place of Hearing.

(a) Appeals shall be heard promptly.

(b) Appeals relating to a special order, order to take special action, the reasonableness of the abatement period and an expedited proceeding shall be given priority over other proceedings.

(c) When the Appeals Board is notified that a case is being reviewed by the Bureau of Investigations or any prosecuting authority, the Appeals Board shall delay the hearing until notified that review is concluded or for a period not exceeding three years, whichever occurs earlier. If the Appeals Board is notified that criminal charges have been filed, the Appeals Board shall subsequently extend the delay until completion of the criminal case, which shall be deemed to occur on the date of a verdict of not guilty, a dismissal of the case by a court, or the date of sentencing after a verdict or plea of guilty or no contest. The Appeals Board may also delay the case beyond three years from the date of the incident on the written request of a party or prosecuting authority if necessary to allow the Bureau of Investigations or any prosecuting authority to conclude its review or criminal prosecution of the case.

(d) When setting the date(s), time(s), and lengths for the hearings, the Appeals Board will consider the following:

- (1) The type and complexity of the case.
- (2) Whether multiple hearings can be set on the same day without necessitating a continuance.
- (3) The parties' projection and Administrative Law Judge's projection of the length of time needed for the hearing.
- ~~(4) The Administrative Law Judge's projection of the length of time needed for the hearing.~~
- (5) Any other fact deemed relevant by the Administrative Law Judge or Presiding Administrative Law Judge.

(e) Notwithstanding Government Code section 11440.30 of the Administrative Procedure Act, the Administrative Law Judge shall conduct all or part of a hearing using a videoconference platform, if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits.

(f) Hearings shall be set for videoconference unless the notice of hearing specifically states otherwise. The setting of a hearing by videoconference is without prejudice to a party challenge to the hearing format per subdivision (g). Where the hearing is noticed for an in-person proceeding, the Appeals Board may determine the location of the hearing. Factors and criteria relevant to that determination include, but are not limited to, the following:

- (1) The place of employment where the violation is alleged to have occurred;
- (2) The location and suitability of Appeals Board hearing venues;
- (3) The availability of Administrative Law Judges, witnesses, and parties;
- (4) The location of the parties and the witnesses;
- (5) Whether multiple hearings can be set on the same day without necessitating a continuance;

- (6) Transportation barriers or travel distance required for attendance;
- (7) Hardship caused by time away from current employment or other responsibilities that would be required of a party or witness in order to attend the hearing;
- (8) Inability of a party or witness to secure care for children, other family members, or dependents that would inhibit travel to the hearing;
- (9) The health and safety of parties, witnesses, representatives, and Appeals Board staff;
- (10) Any other fact deemed relevant by the Administrative Law Judge or Presiding Administrative Law Judge.

(g) Where a party objects specifically to the videoconference format, in full or in part, the moving party must file a motion in compliance with section 371. To prevail on the motion, the moving party must demonstrate, by a preponderance of the evidence, that it will be prejudiced or its due process rights will be compromised if the hearing is conducted by videoconference. The motion must be accompanied by evidence in the form of either declarations (pursuant to section 347, subdivision (i)) or specific references to witness testimony, and citation to the record, demonstrating the prejudice or compromise to the due process rights.

Note: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7, 149.5 and 6308(c), Labor Code.