

DEPARTMENT OF INDUSTRIAL RELATIONS  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD

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To: Stakeholders  
From: Appeals Board  
Re: Regulations for 2015  
Date: January 23, 2015

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The Appeals Board is proposing a substantial number of changes, deletions and additions to its Rules of Practice and Procedure. The Board will be discussing these items at its meeting on February 4, 2015. The meeting will be held at 9:30 a.m. at the Sacramento office, 2520 Venture Oaks Drive, Suite 300. There will be a telephonic connection at the West Covina office at 100 North Barranca Street, Suite 410.

Many of the changes to be discussed were presented to the stakeholder community at a meeting on November 6, 2014. The Board held a general discussion regarding the implementation of AB 1634, and the regulatory changes necessitated by the forthcoming OASIS electronic case management system. Since that meeting, more detailed regulations have been drafted to address additional impacts of OASIS. In the course of this comprehensive review of regulations, it was noted that a number of Board processes that have been implemented under general Board rules would be improved by more specific provisions. Some additions to the rules are proposed. Thus, there are four categories of changes in this update to the Rules of Practice and Procedure. There will also be a Public Hearing on these rules after notice is provided consistent with the Rulemaking provisions of the Administrative Procedure Act (Govt. Code section 11340 et seq.).

The additional components of the AB 1634 implementation include changes to sections 364, 364.1 and 364.2 responsive to effectuating itemized changes to a citation or notification of penalty without requiring a written motion. (Labeled "AB 1634" on the attached chart).

OASIS-related proposed changes include amendments to the definitions rule, 347; changes specifying the content of an appeal filing that remove the requirement to use the form, and instead identify information to be submitted to initiate and perfect an appeal, including specific information regarding affirmative defenses to be included in the appeal filing; changes clarifying service methods and times to

account for electronic filing of documents, and others. (Labeled “OASIS” on the attached chart).

Additional clarifying changes include stating that failure to appear at a pre-hearing conference can be grounds for dismissal and specifying that non-serious cases may be subject to alternatives to the standard process. (Labeled “Current” on the attached chart).

New regulations include processes that allow the parties to settle appeals without a good cause determination being made by the Appeals Board, but rather allowing a 30 day protest period and a notification to affected employees process to allow interested parties to challenge settlements on listed ground applying the APA scope of the Judicial Canons of Ethics to Board hearing officers; specific timelines for beginning and responding to discovery requests, and the creation of a Discovery Conference as an available proceeding for cases where discovery requests are not complied with or properly made in the ordinary course of the proceedings. This is consistent with civil case settlement principles and is much more efficient for all parties, including the Board. (Labeled “New” on the attached chart).

Attached are the text of the regulations, and a chart indicating which rule numbers fall into each of the four change types. Also, near the title of each regulation, we have indicated which of the four change-types the section fall under.

We look forward to hearing your comments and concerns. These may be made at the public meeting on February 4, 2015, or by written feedback submitted to our Sacramento office to Executive Officer Kari Johnson, Industrial Relations Counsel Autumn Gonzalez or OASIS Lead ALJ Neil Robinson.

<b>REGULATIONS WORKSHEET</b>					
<b>EXISTING REG. #</b>	<b>PROPOSED NEW #</b>	<b>REG. TITLE</b>	<b>PROPOSED TITLE CHANGE</b>	<b>GROUP (OASIS, AB 1634, etc)</b>	
346			OSHAB Scheduling and Info Sys	OASIS	
346.1			Validity of Scanned Documents	OASIS	
346.2			Official Record and OASIS E-File	OASIS	

347		Definitions		OASIS	
348		Computation of Time		OASIS	
352		Ex Parte Communications		CURRENT	
355	355.1	Proper Method of Service & Official Address of Record	Official Address Record	OASIS	
	355.4		Filing Docs with the AB	OASIS	
	355.3		Service by Parties, Intervenor, Obligors & Representatives	OASIS	
	355.2		Proper Method of Service by Appeals Board	OASIS	
356		Notice to Ees of Appeal & Hearing		NUMBERING	
356.2		Responsibility of Ee to Notify Er & Other Ees of Hearing		NUMBERING	
359		Filing of Appeal-Date		OASIS	
359.1		Appeal Form	Filing of Appeal-Requirements	OASIS	
361.3		Issues on Appeal		NEW	
362	362	Stay of Abatement Period		AB 1634	
364		Withdrawal of Appeal		AB 1634	
364.1		Withdrawal of Div. Action	Withdrawal of All or Part of Div. Action	AB 1634	
364.2		Disposition of Appeal		NEW	
371.1		Motions Concerning Hearing Dates		NUMBERING	
372.6		Proceeding to Compel Discovery		CURRENT	
	372.8		Discovery Completion & Conference	NEW	
	372.9		Discovery; Exclusive Provisions	NEW	

376		Time and Place of Hearing		CURRENT	
376.1		Conduct of Hearing		NUMBERING	
376.4		Return of Exhibit		OASIS	
376.7		Hearing Record		NEW	
378		Representation at hearing		NUMBERING	
380		Briefs		CURRENT	
383		Failure to Appear		CURRENT	
392		Proof of Service		NUMBERING	
392.4		Motions During Reconsideration Process		NUMBERING	
392.5		Availability of Hearing Tapes	Availability of Hearing Recording	CURRENT	
	355.6		Form and Size Requirements for Filed Paper Documents	OASIS	
	355.5		Form and Size Requirements for Electronic Filed Documents	OASIS	
	376.8		Administrative Law Judge preparation of Hearing Record	OASIS	
	350.3	Application of Code of Ethics		NEW	