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DWCNewsline

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New Workers' Compensation Appeals Board rules of practice and procedure became effective Nov. 17, 2008

Changes to the rules of practice and procedure of the Workers' Compensation Appeals Board (WCAB) went into effect Nov. 17, 2008 and are now posted on the WCAB's Web site at <http://www.dir.ca.gov/WCAB/WCABRulemaking.html>.

There are numerous changes to the rules, some highlights of which include:

- Adopting new rule 10397 relating to restrictions on the rejection for filing of documents that are subject to a statute of limitations or a jurisdictional time limitation
- Adopting new rule 10403 relating to the need to file an application or other case opening document before the jurisdiction of the WCAB can be invoked and before compelled (i.e., non-voluntary) discovery can be commenced
- Amending rule 10500 so as to place all of the provisions relating to service by the WCAB into a single rule (i.e., former Rule 10520 is repealed)
- Amending rule 10505 so as to put all of the service provisions relating to parties and lien claimants into a single rule (i.e., former Rule 10514 is repealed). Rule 10505 addresses personal, mail, e-mail and fax service by the parties and lien claimants (the latter two types of service being new under EAMS), including service on another party or lien claimant using its designated preferred method of service (see court administrator rule 10218). Rule 10505 also addresses the duty to re-serve a document, when the serving party or lien claimant receives notice that its service on another party or lien claimant has failed
- Amending rule 10507 addressing the time requirements for a party or lien claimant to act or respond when served with a document. Among other things, the former "five-day rule" – which had extended the time within which to act or respond when service was made *by mail* on an address in California – now also applies to service by fax or e-mail, if the "physical address" of the party or lien claimant being served is within California

- Adopting new rule 10550 relating to the obligation of parties and lien claimants to properly identify themselves in pleadings and when appearing at hearings
- Amending rule 10561 relating to sanctions. The amendments are extensive and detailed
- Amending rule 10629, which now sets forth specific requirements regarding the filing and listing of exhibits
- Amending rule 10770 relating to required procedures for the filing and service of lien claims
- Adding rule 10770.5, which sets forth various verification and other requirements for lien claims and applications filed by medical and/or medical-legal lien claimants
- Adding rule 10770.6, which sets forth various verification and other requirements for declarations of readiness filed by medical and/or medical-legal lien claimants
- Adding rule 10782 regarding vexatious litigants
- Amending rule 10840 to provide that petitions for reconsideration, removal, and disqualification (and answers thereto) may be filed with any WCAB district office or with the office of the appeals board in San Francisco. *[NOTE: Under amended Rule 10840, petitions for reconsideration, removal, and disqualification relating to WCJ decisions no longer need to be filed at the district office from which the decision issued, and petitions for reconsideration from appeals board decisions no longer need to be filed with the office of the appeals board in San Francisco. Instead, such petitions may be filed at any office. However, amended rule 10840 relates only to petitions for reconsideration, removal, and disqualification (and answers thereto). Therefore, all other documents – including but not limited to other types of petitions (e.g., penalty petitions, 132a petitions, etc.) are to be filed at the appropriate district office, absent a specific exception under the rules of the WCAB or court administrator.]* However, where a petition is filed in one district office, duplicate copies of the petition are not to be filed in any other district office or with the *appeals board*.
- Amending rule 10842, which now imposes various requirements relating to the contents of petitions for reconsideration, removal and disqualification (and answers thereto), including but not limited to a requirement that evidentiary statements shall be supported by references that state with specificity the place in the record where the evidence supporting the statement appears. Rule 10842 still provides that documents which are already in evidence or are otherwise already part of the adjudication file shall not be attached to petitions for reconsideration, removal and disqualification (and answers thereto)
- Amending rule 10843 and adding rule 10844, so as to require that petitions for removal and for disqualification (and answers thereto) must be verified under penalty of perjury
- Adding rule 10845, which in essence requires that, except as otherwise provided by sections 10840 or 10865, all documents filed in connection with any petition for reconsideration, removal, disqualification or any other matter pending before the appeals

board shall comply with various court administrator regulations relating to the time, place, and form for filing documents. Rule 10845 specifically requires that such petitions and other documents comply with 25-page limitation of court administrator rule 10232(a)(6), but rule 10845 further requires that any supplemental petition or answer submitted under rule 10848 shall not exceed 10 pages, unless otherwise directed by the appeals board.

- Amending rule 10865, relating to petitions for reconsideration from arbitration decisions in “carve-out” cases. [*NOTE: Although new rule 10840 generally allows petitions for reconsideration to be filed at any WCAB office, petitions for reconsideration in carve-out cases are an exception to rule 10840. Because most carve-out cases will never have been in the WCAB system, petitions for reconsideration in carve-out cases must be filed directly with the appeals board in San Francisco.*]
- Amending rule 10866, relating to petitions for reconsideration from arbitrator decisions made under the mandatory or voluntary arbitration provisions of Labor Code sections 5270 through 5275.
- Repealing numerous other rules, whose subject matter will now be covered by the new regulations of the court administrator, which also became effective on Nov.17, 2008. [*NOTE: The court administrator’s new regulations are posted on the Division of Workers’ Compensation’s Web site at: http://www.dir.ca.gov/dwc/DWCPropRegs/EAMS_regulations/EAMS_regulations.htm.*]

The above summary does not include all of the new, amended, or repealed rules, nor does it purport to fully cover all new or amended provisions. Members of the workers’ compensation community are encouraged to go to the WCAB and DWC Web sites to review the complete copies of the new rules of the WCAB and court administrator to adequately familiarize themselves with all of the changes.

Any previously existing WCAB rules that were not amended or repealed still remain in full force and effect.

In its formal notice and public comment rulemaking proceedings, the WCAB had proposed to add rule 10610, regarding the admissibility and service of reports from non-medical experts. However, in light of the numerous adverse public comments the WCAB received, the WCAB decided not to adopt proposed rule 10610 and instead withdrew it.

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