

# McDermott Will & Emery

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J. Jeffrey Mojcher  
Chief Counsel  
California OSHA Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833-4229

Re: Suggested amendment to Board Rule 356(2)

Dear Mr. Mojcher:

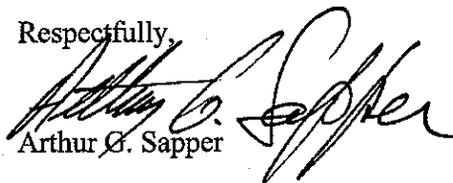
I respectfully suggest that the Board amend Rule 356(b)(2), which states:

If an employee sustained a serious injury or illness, or was killed, as a result of an alleged violation that is being appealed, service in the manner prescribed in Section 355(c) shall be made upon the employee or the representative of the deceased employee.

I suggest that the opening phrase be amended to state, "If it is alleged that an employee ...." A less desirable alternative is to insert the word "allegedly" before the word "sustained," or before "result".

The reason for the suggestion is that it could be argued that, as the rule is now written, (a) service of papers is required only if an employer agrees that an employee did indeed sustain a serious injury or illness, or was killed, "as a result" of an alleged violation – an allegation that the employer might be contesting; and (b) if the employer does serve papers in apparent response to the rule, it could be considered a concession that the injury occurred "as a result" of the alleged violation. The proposed amendment would clarify the intent of the rule and allay any possible concern.

Respectfully,

  
Arthur G. Sapper

cc. Amy Martin, Esq.

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