

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Appeals Board
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STAKEHOLDER UPDATE 3: THE ROAD TO VIDEO HEARINGS

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On March 4, 2020, Governor Newsom declared a state of emergency to help the state prepare for a broader spread of COVID-19. The following day, the Department of Industrial Relations issued a memorandum to DIR Staff in order to provide additional information regarding coronavirus, also known as COVID-19, as well as best practices and resources available for illness prevention.

Shortly thereafter, it became obvious that in-person hearings would not, on an interim basis, be an option.

The ALJs were instructed to conduct telephonic settlement conferences in lieu of in-person hearings for upcoming matters on the hearing calendar. In March, most Appeals Board staff began teleworking on a full-time basis.

On May 7, 2020, Governor Newsom issued Executive Order Number N-63-20, which authorized the use of electronic means to conduct hearings, provided certain criteria are met: Each participant must have an opportunity to participate in, and to hear, the entire proceeding while it is taking place and to observe exhibits; members of the public must be able to observe the hearing by electronic means; and the presiding officer must satisfy all requirements of the Americans with Disabilities Act and the Unruh Civil Rights Act.

In early May, at the direction of the Appeals Board, a committee, consisting of four Administrative Law Judges, overseen by the two Presiding Administrative Law Judges, was formed to explore establishing protocols for conducting video hearings. The committee was tasked with examining and assessing various available video platforms, and to also assess video hearing methods used by other State agencies.

At the Appeals Board Meeting of May 28, 2020, stakeholders were presented with the opportunity to present any concerns and considerations which would likely be associated with conducting hearings on video platforms. Stakeholder participation included, but was not limited to, representatives from the Division of Occupational Safety and Health, representatives from the legal defense bar, administrative law judges, and at least one labor organization. Stakeholders' concerns were heard and were considered when the video hearing protocols were developed and implemented.

On July 28, 2020, the Appeals Board conducted its first video hearing on the Zoom video platform. The hearing was an unqualified success. Having assessed several video platforms, the Appeals Board determined that the Zoom platform would best serve the needs of the Appeals Board. Shortly thereafter, the Appeals Board determined that hearings could resume, on an interim basis, using the Zoom platform.

The video hearing committee has conducted video hearing training for all administrative law judges and affected Appeals Board support staff, and has conducted mock hearings with all administrative law judges. The video hearing committee has also conducted Zoom interactive training sessions with stakeholders. The Appeals Board now has the capability to conduct video hearings, and is now calendaring video hearings.