

### **§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 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) The Appeals Board shall set the place of the hearing at a location as near as practicable to the place of employment where the violation is alleged to have occurred. When making this determination, the Appeals Board's evaluation will include the location of Appeals Board hearing venues, the availability of Administrative Law Judges, the location of the parties and the witnesses.~~

~~(e-d)~~ When setting the dates, times and length for the hearing, 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 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 11440.40 of the Administrative Procedure Act, the Administrative Law Judge may conduct all or part of a hearing by telephone, videoconference, or other electronic means, 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) The Administrative Law Judge conducting a hearing shall determine the location of the hearing whether parties, representatives, and witnesses shall participate in a hearing in person, by telephone, by videoconference, or other electronic means, or a combination thereof. The selection of the hearing location shall occur upon the Administrative Law Judge's own motion or upon application of a party or representative.

- 1) Considerations in determining whether to set the matter for a hearing telephonically, by videoconference, or other electronic means, include, but are not limited to:
  - A. transportation barriers or travel distance required for attendance at an in-person hearing, for any party or witness;
  - B. hardship caused by time away from current employment or other responsibilities that would be required of a party or witness in order to attend an in-person hearing;
  - C. inability to secure care for children, other family members, or dependents that would prevent travel to an in-person hearing;
  - D. inability of parties or witnesses to attend an in-person hearing;
  - E. the health and safety of parties, witnesses, representatives, and Board staff and
  - F. other hardships or impediments raised or addressed by the parties or witnesses.
- 2) If the Administrative Law Judge selects the hearing to occur in person, considerations for determining the hearing venue include, but are not limited to:
  - A. the place of employment where the alleged violation is said to have occurred;
  - B. the location of parties and witnesses;
  - C. the number of representatives, parties, and witnesses;
  - D. the availability of Appeals Board's hearing venues; and
  - E. the health and safety of parties, witnesses, representatives and Board staff.
- g) If the Administrative Law Judge sets the hearing, or part of it, to occur telephonically, by videoconference, or other electronic means, in whole or in part, and a party objects, the hearing will not proceed by those means upon a finding that a party to the proceeding will be prejudiced by all or part of the hearing being conducted by telephone, videoconference, or other electronic means. A finding of prejudice will not be made upon speculation. It will require an evidentiary demonstration, based upon affidavit or declaration, that a party's ability to present its case would be seriously impaired were the hearing to occur via telephone, videoconference or other electronic means.

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