

§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 the 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) Notwithstanding Government Code section 11440.30 of the Administrative Procedure Act, the Administrative Law Judge may conduct all or part of a hearing using a videoconference platform, 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.

(e) For each hearing, other than expedited proceedings set pursuant to section 373, the Appeals Board shall determine and set the following: the date(s), time(s), and length for the hearing; the format for conducting the hearing, whether in-person or by videoconference or a combination thereof; and the physical location of the hearing if the hearing includes an in-person format. Factors and criteria relevant these determinations, which may be addressed or discussed at prehearing or status conferences, include, but are not limited to, the following:

- (1) The place of employment where the violation is alleged to have occurred;
- (2) The location and suitability of Appeals Board hearing venues;
- (3) The availability of Administrative Law Judges, witnesses, and parties;
- (4) The location of the parties and the witnesses;
- (5) Evidentiary presentation and case management issues;
- (6) Whether multiple hearings can be set on the same day without necessitating a continuance;
- (7) The parties' and Administrative Law Judge's projection of the length of time needed for the hearing;
- (8) Transportation barriers or travel distance required for attendance at a hearing, for any party or witness;
- (9) Hardship caused by time away from current employment or other responsibilities that would be required of a party or witness in order to attend a hearing;

- (10) Inability of a party or witness to secure care for children, other family members, or dependents that would prevent travel to a hearing;
- (11) The health and safety of parties, witnesses, representatives, and Appeals Board staff;
- (12) Any factors requiring a more expeditious hearing date;
- (13) Stipulations of the parties;
- (14) Any other fact deemed relevant by the Administrative Law Judge or Presiding Administrative Law Judge.

(f) During any prehearing or status conference, each party and party representative shall be prepared to discuss whether to set the matter for a hearing in person, by videoconference, or combination thereof, and be prepared to discuss any relevant criteria set forth in subdivision (e)(1) through (14). The Administrative Law Judge may require evidence supporting the application of these criteria to the specific case.

(g) The Appeals Board shall set the date(s) and time(s) for hearings for expedited matters pursuant to section 373. An expedited hearing shall be set for the videoconference format unless the notice of hearing specifically states otherwise.

(h) If a party objects to the hearing date, time, location, or format, the objecting party shall file a written motion in compliance with sections 371 and/or 371.1, identifying the requested change in the hearing. Alternatively, if the facts supporting the motion first become known after the hearing, they shall file the motion(s) as soon as the facts supporting the motion become known. Where a party objects to specifically to the format selected to conduct the hearing, the moving party must demonstrate, by a preponderance of the evidence, that it will be prejudiced or its due process rights will be compromised if it conducts the hearing in that format, with reference to the criteria set forth in subdivision (e). The motion must be accompanied by evidence in the form of either declarations (pursuant to section 347, subdivision (i)) or specific references to witness testimony and citation to the record.

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