

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION APPEALS BOARD**

**NOTICE OF PROPOSED RULEMAKING
RULES OF PRACTICE AND PROCEDURE**

TITLE 8, CALIFORNIA CODE OF REGULATIONS, SECTIONS 10300 THROUGH 10999

NOTICE IS HEREBY GIVEN that the Workers' Compensation Appeals Board (WCAB) proposes to amend its Rules of Practice and Procedure (Rules)¹ relating to lien claims, as described below, after considering all comments, objections, and recommendations regarding the proposed action. Equal weight will be accorded to oral and written comments.

The WCAB's proposed amendments to its Rules are being initiated pursuant to its rulemaking power under Labor Code sections 5307(a), 133, 5309 and 5708,² subject to the procedural requirements of section 5307.4. This Notice of Proposed Rulemaking and accompanying Initial Statement of Reasons have been prepared to comply with the procedural requirements of section 5307.4 and for the convenience of the regulated public to assist it in analyzing and commenting on this largely non-APA rulemaking process.³

PUBLIC HEARING:

The WCAB will hold a public hearing starting at 10:00 a.m. on Thursday, September 8, 2011, in the Santa Barbara Room, Basement Level, of the Hiram Johnson State Office Building located at 455 Golden Gate Avenue, San Francisco, California. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. Public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. To provide everyone with an opportunity to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing. If public comment concludes before the Noon recess, no afternoon session will be held.

The state office building and its hearing rooms are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodations to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State-wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

The WCAB requests but does not require that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

WRITTEN COMMENT PERIOD:

Any interested persons, or their authorized representatives, may submit written comments to the WCAB relevant to the proposed rulemaking. The written comment period closes at 5:00 PM on September 8, 2011. The WCAB will consider only comments it has received by that time. The address for submission of comments by e-mail is WCABRules@dir.ca.gov. The address for submission of comments by mail is: Neil P. Sullivan, Assistant Secretary and Deputy Commissioner, Workers' Compensation Appeals Board, P.O. Box 429459, San Francisco, CA 94142-9459. The address for submission of comments by delivery service or personal delivery is: Neil P. Sullivan, Assistant Secretary and Deputy Commissioner, Workers' Compensation Appeals Board, 455 Golden Gate Avenue, Ninth Floor, San Francisco, CA 94102. Comments also may be submitted by facsimile (Fax) at 1-415-703-4549.

The WCAB prefers written comments to oral testimony and prefers written comments submitted by e-mail. If written comments have been submitted, it is not necessary to present oral testimony at the public hearing.

AUTHORITY AND REFERENCE:

¹ See Cal. Code Regs., Title 8, Chapter 4.5, Subchapter 2, section 10300 et seq.

² All further statutory references are to the Labor Code unless otherwise specified.

³ Under Government Code section 11351, the WCAB is not subject to Article 5 (Gov. Code, § 11346 et seq.), Article 6 (*id.* § 11349 et seq.), Article 7 (*id.* § 11349.7 et seq.), or Article 8 (*id.* § 11350 et seq.) of the rulemaking provisions of the Administrative Procedures Act (APA), with the sole exception that section 11346.4(a)(5) [publication in the California Regulatory Notice Register] does apply to the WCAB.

Labor Code sections 5307(a), 133, 5309 and 5708, authorize the WCAB to adopt the proposed regulations. The proposed regulations implement, interpret and make specific various sections of the Labor Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW:

Labor Code section 4903 et seq. make various provisions for the filing and determination of lien claims in workers' compensation proceedings. Labor Code sections 5502 and 5502.5 establish hearing procedures for workers' compensation proceedings.

Proposed new Rule 10562.5 specifies the circumstances under which a lien claim may be dismissed for lack of prosecution after the injured employee's underlying case has been resolved or the employee has chosen not to proceed with it. Proposed new Rule 10562.5 creates a procedure for dismissing a lien claim that has been inactive for a substantial period of time, after giving the lien claimant notice and an opportunity to be heard. Such a procedure will result in lien claimants pursuing their lien claims in a timely manner. This procedure also will create more certainty and predictability in workers' compensation claims management by allowing insurance carriers and self-insured employers to close their cases, liquidate their reserves, and more accurately predict future liabilities. Furthermore, the proposed procedure will allow an inactive lien claim to be dismissed through pleadings, without a hearing, if a lien claimant does not timely object to the dismissal, thereby increasing available calendar time.

The proposed amendments to Rule 10770 will change the *filing* requirements for lien claims to provide that only original (i.e., opening) liens shall be filed, and *not* amended liens, and that *no* supporting documentation for *any* liens shall be filed—except that supporting documentation and/or amended liens may be filed as proposed exhibits (see Cal. Code Regs., tit. 8, § 10233(g) & (h)) or as ordered by a workers' compensation judge or the WCAB. This reduction in the amount of paper filed in conjunction with lien claims will significantly alleviate the scanning backlogs that exist at some district offices, as well as have other beneficial effects. [*NOTE: Lien claimants still must serve original liens, amended liens, and all supporting documentation on the parties; therefore, the parties will remain fully apprised of the nature and amount of each lien claim.*] In addition, the proposed amendments to Rule 10770 will close a loophole in the statute of limitations laws that creates an incentive for entities to purchase old accounts receivables, file liens, and use the WCAB's scarce judicial resources to collect payment on those ancient bills.

Proposed new Rule 10770.1 will, among other things, require that when a declaration of readiness to proceed (DOR) is filed on a lien dispute, the lien claimant or party filing the DOR must designate that they are requesting a "lien conference." The proposed Rule will also cause a "lien conference" to be treated like a mandatory settlement conference, e.g., a pretrial conference statement must be prepared and discovery will close. This will force parties and lien claimants to focus on the issues and be fully prepared to go to trial, thus reducing continuances and either facilitating settlement or at least limiting the issues to be tried.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION:

The WCAB has made the following initial determinations:

Mandate on Local Agencies and School Districts: None.

Cost to Any Local Agency or School District That Is Required To Be Reimbursed Under Part 7 (Commencing with Section 17500) of Division 4 of the Government Code: None.

Other Nondiscretionary Costs or Savings to Local Agencies: None

Cost or Savings to Any State Agency or in Federal Funding to the State: There may be some savings to the Division of Workers' Compensation of the Department of Industrial Relations.

Significant Statewide, Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete With Businesses in Other States: None.

Effect on Small Business: Small businesses that file lien claims with the WCAB may experience slight reductions in costs due to the elimination of the filing of amended liens and the filing of documentation in support of liens. Otherwise, the proposed regulatory action involves changes in the procedures for the adjudication of lien claims that do not impose significant financial or economic burdens on the regulated small businesses.

Cost Impacts on Representative Private Persons or Businesses: None.

Other Impacts on Jobs and Businesses: None.

Effect on Housing Costs: None.

The adoption of these regulations is not expected to create or eliminate jobs or businesses in the State of California or reduce or expand businesses currently doing business in the State of California.

CONSIDERATION OF ALTERNATIVES:

Under Government Code section 11351, the WCAB is *not* subject to the provisions of Government Code section 11346.5(a)(13). Nevertheless, the WCAB invites interested persons to present statements or arguments at the scheduled hearing or during the written comment period regarding reasonable alternatives that would be more effective in carrying out the purpose of this rulemaking, or would be as effective and less burdensome to the affected private persons, than the proposed action of this rulemaking.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS:

Under Government Code section 11351, the WCAB is *not* subject to the provisions of Government Code section 11346.45 relating to pre-publication public review and comment. Nevertheless, consistent with Government Code section 11346.45(a), the proposed regulations are not so complex or large in number that they cannot easily be reviewed during the comment period.

CONTACT PERSONS:

Nonsubstantive inquiries concerning this rulemaking action, such as requests to be added to the e-mail and/or mail distribution list(s) or requests for copies of rulemaking documents (e.g., the proposed regulations, the Initial Statement of Reasons), may be directed to: Annette Gabrielli, Regulations Coordinator, Workers' Compensation Appeals Board, P.O. Box 429459, San Francisco, CA 94142-9459, E-mail: WCABRules@dir.ca.gov, Phone: (415) 703-4580. Please direct requests for copies of the proposed regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Ms. Gabrielli at the foregoing address.

The backup contact person for non-substantive inquiries and the contact person for substantive inquiries is: Neil P. Sullivan, Assistant Secretary and Deputy Commissioner, Workers' Compensation Appeals Board, P.O. Box 429459, San Francisco, CA 94142-9459, E-mail: WCABRules@dir.ca.gov, Phone: (415) 703-4554.

Note: In the event that Deputy Commissioner Sullivan is unavailable, substantive inquiries should be directed to Rick Dietrich, Secretary and Deputy Commissioner at the same address, email address and telephone number.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE, AND INTERNET ACCESS:

Throughout the rulemaking process, the WCAB will have its entire rulemaking file available for inspection and copying at its office at 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102, between the hours of 9:00 AM and 4:30 PM, Monday through Friday (excluding holidays). In addition, the above-cited materials may be accessed on the internet at www.dir.ca.gov/wcab/WCABPropRegsJul2011.htm. As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, and the Form 399.

AUTOMATIC MAILING:

A copy of this Notice, including the Informative Digest, the Initial Statement of Reasons, and the text of the proposed regulations, will automatically be sent to those interested persons on the mailing list of the WCAB, and to all persons who have requested notice of hearing as required by Labor Code Section 5307.4.

If adopted, the regulations with any final amendments will appear in the California Code of Regulations at Title 8, Chapter 4.5, Subchapter 2, commencing with Section 10300. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.ccr.oal.ca.gov.