

**SECOND NOTICE OF MODIFICATIONS TO
TEXT OF PROPOSED REGULATIONS
Modifying Regulation Concerning Time and Place of Hearing**

The Occupational Safety and Health Appeals Board (“Board”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed actions.

Pursuant to the requirements of Government Code section 11346.8, subdivision (c), and section 44 of Title 1 of the California Code of Regulations, the Board is providing a second notice of changes made to the proposed text of California Code of Regulations, title 8, section 376.

On June 16, 2022, the Board held a regulatory hearing regarding the proposed amendments to California Code of Regulations, title 8, sections 372.6, 372.8, 376, and 376.8. In response to public comments received during that meeting and in writing during the 45-day comment period, and in response to Board staff consideration, the Board proposed further modifications to section 376. The Board thereafter initiated a 15-day comment period regarding the proposed further revisions. The Board received further written comments. In response to these comments, and in response to Board staff consideration, the Board proposes additional further modifications to section 376.

The additional further modifications to the original proposed text may be found in the following subdivisions of section 376:

- Section 376, subdivision (e) – This subdivision is modified to specify that the Board will provide instruction on how “to participate in the videoconference, identify the necessary technological equipment, and indicate what to do if technical problems arise,” instead of “provide instruction on how to access and attend the virtual location.” The purpose is to address stakeholder concerns regarding potential confusion arising from the terms “virtual location,” “access,” and “attend,” and to address the question of what participants should do if they encounter technical problems during the videoconference hearing.
- Section 376, subdivision (e)(2)(A) – This subdivision is modified to specify that, where pre-hearing lodging of exhibits is required, the Board may grant parties the opportunity to utilize additional exhibits during the hearing, which were not previously lodged, upon a showing that good cause exists, that no prejudice would occur, or such other showing deemed relevant by the Administrative Law Judge. The purpose of this modification is to address stakeholder concerns that parties cannot always predict what evidence they will need at hearing, e.g., for impeachment purposes or to refresh a witness’s recollection.
- Section 376, subdivision (e)(3) – This subdivision is modified to clarify that a party may contend, rather than establish, in a reasonable amount of time prior to the hearing, that it lacks access to the technological equipment necessary to attend, comply, and/or conduct a

hearing by videoconference. The subdivision is additionally modified to specify that the Board may require evidence of such claims before making facilities available. The purpose is to provide clarity and consistency in the language of the subdivision.

- Section 376, subdivision (i) – This subdivision is modified to specify that, when a hearing is ordered to occur by videoconference, the videoconference format of the hearing will constitute the place of hearing and hearing room. This subdivision is also modified to clarify that the right to appear in person or personally at a hearing is satisfied by the videoconference appearance, to the extent that the Board’s rules of practice and procedure provide a right to appear in person or personally. Additionally, it specifies that subpoenas may be issued pursuant to section 372.2, either subdivision (a) or (c), requiring attendance of a person at the videoconference place of hearing, provided the subpoena includes sufficient instruction and information on how to participate in the videoconference, identifies the necessary technological equipment, and indicates what to do if technical problems arise. These modifications remove the terms “virtual location,” “access,” and “attend,” based upon stakeholder concerns regarding potential confusion surrounding those terms. Finally, the subdivision is modified to provide that the Board shall maintain exemplars of the required disclosures on its website, and shall furnish optional subpoena forms upon request for attorneys’ use. The purpose of these modifications is to ensure consistency and clarity throughout the Board’s rules of practice and procedure, and to address stakeholder concerns.

A copy of the full text of the standards, with the modifications clearly indicated, is attached for your information. Language added in the original proposal and deleted in this revision is in italicized, double strikethrough. Language added in first modification and deleted in this revision is in italicized, bolded, double strikethrough. Language added by this revision is in italicized, bolded, double underline.

If you have any comments regarding the proposed changes, the Board will accept written comments between October 31, 2022, and November 15, 2022. All written comments must be submitted to the Board by 5:00 p.m. on November 15, 2022. The Board will only consider written comments received by that time. Written comments should be submitted to:

Aaron Jackson, Staff Counsel
Cal/OSHA Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Comments may also be submitted via email to ajackson@dir.ca.gov

All written comments received by November 15, 2022, which pertain to the indicated changes will be reviewed and responded to as part of the compilation of the rulemaking file. **Please limit your comments to the modifications of the text.**

AUTHORITY AND REFERENCE

Labor Code (LC) section 148.7 authorizes the Board to adopt, amend, or repeal rules of practice and procedure pertaining to hearing appeals and other matters falling within its jurisdiction. The Board is charged with hearing and resolving appeals filed by employers for occupational safety and health citations issued by the Division of Occupational Safety and Health (Division).

AVAILABILITY OF DOCUMENTS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. Copies may be obtained by contacting Mr. Jackson at the contact information listed above. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the proposed regulations (as originally proposed) in underline and strikethrough can be accessed through our website at <https://www.dir.ca.gov/oshab/Rulemaking.htm> Copies of this Notice of Modifications and the text of the modified regulations in double underline and double strikethrough can also be accessed at the above website address.