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 (i.e., Division 1, Chapter 4.5, Subchapter 2)

**NOTICE IS HEREBY GIVEN** that the Workers’ Compensation Appeals Board (WCAB) proposes to amend various provisions of its Rules of Practice and Procedure (Rules),[[1]](#footnote-1) as described below, after considering all comments, objections, and recommendations regarding the proposed action. *Equal weight will be accorded to oral and written comments. However*, ***the WCAB prefers written comments submitted electronically using*** [***the comment submission form***](https://forms.office.com/g/7dMmzbyM5F)***. If written comments are timely submitted, it is not necessary to present oral comments at the public hearing.***

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]](#footnote-2) subject to the procedural requirements of section 5307.4. This Notice of Proposed Rulemaking and the 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]](#footnote-3)

**PUBLIC HEARING:**

In light of the COVID-19 public health emergency and in compliance with California’s reopening plan, an online public hearing via the Zoom meeting platform has been scheduled in lieu of an in-person public hearing to permit all interested persons the opportunity to present statements or arguments orally or in writing relevant to the proposed action on the following date:

Date: September 24, 2021

Time: 9:00 a.m. to 4:00 p.m., or until conclusion of business

Join from PC, Mac, Linux, iOS or Android: https://dir-ca-gov.zoom.us/j/85768405804?pwd=ckZwdkRrZk82eHk4M2tpTVlvaldwUT09

Password: 211916

Or Telephone:

 Dial:

 USA 404 443 6397

 USA 8773361831 (US Toll Free)

 Conference code: 852415

Find local AT&T Numbers: https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=4044436397&accessCode=852415

Public comment will begin promptly at **9:00 AM** and will conclude when the last speaker has finished their presentation. To provide everyone with an opportunity to speak, public comments will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Comments that would exceed 10 minutes may be submitted electronically using [the comment submission form](https://forms.office.com/g/7dMmzbyM5F). If public comment concludes before the Noon recess, no afternoon session will be held. If an afternoon session is held, public comment will conclude no later than **4:00 PM**.

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 Statewide Disability Accommodation Coordinator 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 an electronic version of their comments prior to 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 **4:00 PM** on **Friday, September 24, 2021**. The WCAB will consider only comments it has *received* by that time.

Pursuant to Government Code § 11546.7, we strongly prefer electronic submission of written comments using [this submission form](https://forms.office.com/g/7dMmzbyM5F). A [separate submission](https://forms.office.com/g/7dMmzbyM5F) must be individually completed and separately submitted for each rule comment. ***Electronic comments submitted in any other format will not be accepted or considered*.**

Written comments may also be submitted in hard copy by mail, delivery service, or personal delivery to the address below. Hard copy comments should consist only of text-based narratives, should not contain any other formatting such as letterheads or graphics, and should not rely on the use of color or images to convey information not conveyed in the text-based narrative. ***Improperly formatted hard-copy documents will be subject to rejection and may not be accepted or considered.***

Workers’ Compensation Appeals Board

Attention: Julie Podbereski, Regulations Coordinator

455 Golden Gate Avenue

Ninth Floor

San Francisco, CA 94102

**AUTHORITY AND REFERENCE:**

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.

**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: None.

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: None.

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.

**PRE-NOTICE 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-notice public review and comment of contemplated amendments to its Rules.

**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: Julie Podbereski, Regulations Coordinator, Workers’ Compensation Appeals Board, 455 Golden Gate Avenue, Ninth Floor, San Francisco, CA 94102, E-mail: WCABRules@dir.ca.gov, Phone: (415) 703-4560. The backup contact person for nonsubstantive inquiries is Rachel Brill, Industrial Relations Counsel IV, at the same address, email address, and phone number.

The contact person for substantive inquiries is: Rachel Brill, Industrial Relations Counsel IV, Workers’ Compensation Appeals Board, 455 Golden Gate Avenue, Ninth Floor, San Francisco, CA 94102, E-mail: WCABRules@dir.ca.gov, Phone: (415) 703-4560. The backup contact person for substantive inquiries is: Anne Schmitz, Secretary / 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 on the internet at <http://www.dir.ca.gov/WCAB/WCABProposedRegulations/2021/WCAB-Rulemaking/Index.htm>. In addition, the above-cited materials may be accessed at the WCAB’s 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), by request. Requests to inspect and copy the physical rulemaking file at the WCAB’s office may be directed to: Julie Podbereski, Regulations Coordinator, Workers’ Compensation Appeals Board, 455 Golden Gate Avenue, Ninth Floor, San Francisco, CA 94102, E-mail: WCABRules@dir.ca.gov, Phone: (415) 703-4560.

**AUTOMATIC MAILING:**

A copy of this Notice, 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, Division 1, 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.oal.ca.gov](http://www.ccr.oal.ca.gov).

1. See Cal. Code Regs., Title 8, Division 1, Chapter 4.5, Subchapter 2, section 10300 et seq. [Return.](#ReturnInst1) [↑](#footnote-ref-1)
2. All further statutory references are to the Labor Code unless otherwise specified. [Return.](#ReturnInst2) [↑](#footnote-ref-2)
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. [Return.](#ReturnInst3) [↑](#footnote-ref-3)