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State of California

DWCNewsline

Division of Workers' Compensation
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Notice of rulemaking and public hearing regarding proposed changes to Workers' Compensation Appeals Board rules

The Workers' Compensation Appeals Board (WCAB) is proposing to amend its "Rules of Practice and Procedure" (see Cal. Code Regs., tit. 8, § 10300 et seq.), specifically, certain rules relating to lien claims. The WCAB's proposed rule changes, its initial statement of reasons and its notice of rulemaking have all been posted on the WCAB Web site at www.dir.ca.gov/wcab/WCABPropRegsJul2011.htm.

Proposed new rule 10582.5 would create a procedure by which a lien claim may be dismissed for lack of prosecution, after the lien claimant has been given notice and an opportunity to be heard.

Proposed amended rule 10770 would, among other things: (1) change the *filing* requirements (but not the *service* requirements) for lien claims; (2) provide that written notice of a lien claim to a defendant will not constitute the "filing" of a lien with the WCAB; (3) provide that if a lien has been "served" on a party, that party will have no obligation to "file" that lien with the WCAB if, after such service, partial or full payment is tendered or made and no additional written demand for payment is served on the party within three months thereafter; and (4) delete the language that "[s]ervice of a lien on a party shall constitute notice to it of the existence of the lien."

Proposed new rule 10770.1 would, among other things: (1) 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"; and (2) 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.

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments on the WCAB's proposed rules changes, orally or in writing, at the following date, time and place:

Date: Thursday, Sept. 8, 2011
Time: 10 a.m. to 5 p.m. or conclusion of business
Place: Santa Barbara Room, basement level
Hiram Johnson state office building
455 Golden Gate Avenue
San Francisco, CA 94102

Please note that public comment will begin promptly at 10 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

However, prior to the public hearing, any person may submit written comments on the proposed rule changes by e-mail, regular mail, or delivery service/personal service. The address for submission of e-mail comments 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/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.

Please note that, unless submitted at the public hearing, all written comments must be received by the WCAB no later than 5 p.m. on Sept. 8, 2011.

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

The WCAB encourages all interested parties to participate in this important process.

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