

PUBLIC NOTICE
Regular Business Meeting Agenda
Public Employment Relations Board
December 9, 2021 ~ 10:00 a.m.

LOCATION: Pursuant to Government Code section 11133, there will not be a physical meeting location. Board members will participate via videoconference. Please follow the instructions below to attend the meeting remotely.

Attend the meeting via video-conference:

1. In your web browser, go to <https://zoomgov.com/>
2. Select "Join a Meeting"
3. Enter the Meeting ID: **160 056 3978**
4. Enter your name
5. Enter the Passcode: **4768208636**, then click "continue"

OR

To attend the meeting via teleconference:

1. Dial (669) 254-5252
2. When prompted, enter the meeting id: **160 056 3978#**
3. Press # to skip the participant id
4. When prompted, enter the meeting password: **4768208636#**

A note on public comment:

In advance of the meeting, those who wish to comment during the public comment portion of the agenda or on specific agenda items may request to be added to the queue by emailing Cheryl.Shelly@perb.ca.gov . Please be sure to include your name, affiliation if any, and topic in the email.

During the meeting, you can make a request to speak via video or the teleconference line when prompted by the Chair at each appropriate agenda item.

1. Roll Call.
2. Adoption of Minutes. October 14, 2021 Meeting
3. Public Comment. This is an opportunity for the public to address the Board on issues not scheduled on today's agenda. The Board cannot act on those items but may refer matters to staff for review and possible Board action at a future, publicly noticed meeting.

**This meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request no later than five working days before the meeting to the Board by contacting Cheryl Shelly at (916) 322-8231 or sending a written request to Ms. Shelly at PERB, 1031 18th Street, Sacramento, California 95811. Requests for further information should also be directed via telephone or writing to Ms. Shelly. Additional information is also available on the internet at www.perb.ca.gov.*

4. Staff Reports. The following Reports will be received. Any matter requiring Board action, and not included on this agenda, will be calendared for a subsequent public Board meeting.
 - A. Executive Director
 - B. Division of Administration
 - C. Office of General Counsel
 - D. Division of Administrative Law
 - E. State Mediation and Conciliation Service

5. Old Business:
 - A. PERB Case Processing Efficiency Initiative (Update)

 - B. Expedited Decision Processing Regulation: Consideration of approval for submitting a rulemaking package to the Office of Administrative Law to initiate the formal rulemaking process to amend PERB regulation section 32147 that governs expedited cases. The proposed regulation is attached following this agenda.

 - C. Request for Accommodation Regulations: Consideration of approval for submitting a rulemaking package to the Office of Administrative Law to initiate the formal rulemaking process to add new PERB regulations governing requests for accommodation. The proposed regulation is attached following this agenda.

6. New Business: NONE

7. Recess to Closed Session. The Board will meet in a continuous closed session each day beginning immediately upon recess of the open portion of this meeting through February 10, 2022.

The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Attachment – Agenda Item 5. B.

32147. Expedited Cases

(a) Motions to Expedite

1. A motion to expedite proceedings within a single division of the Board shall be filed with the General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services, or the Board itself, as appropriate. A motion to expedite proceedings at all divisions shall be filed with the Board itself.
2. A motion to expedite a case must be clearly labeled as a motion to expedite. The motion may not be part of or combined with any other document other than a brief or declarations supporting the motion. The motion
3. Any other party to the proceeding may file a response to a motion to expedite within 5 business days of service of the motion. No reply briefs shall be filed unless otherwise ordered.
4. Denial of any motion to expedite, in whole or in part, shall be without prejudice to a party's ability to renew its motion, unless otherwise ordered.
5. The General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services, or the Board itself may expedite any case on its own motion.

(b) Applicable Criteria

1. All divisions must expedite the following types of cases from initial filing to conclusion, without any motion or order:
 - a. All cases arising under Section 32761, 32770, 32781, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, [61215](#), 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, or 91450.
 - b. All cases in which a representation election or other certification or recognition process or procedure has been stayed pending resolution of the case.
2. In all cases not subject to mandatory expedited processing under subparagraph (b)(1) of this Section, the following criteria shall be considered in determining whether a case should be expedited:

- a. whether expedited processing is necessary to preserve the Board's ability to issue an effective remedy;
- b. whether the case involves alleged conduct that would irreparably harm the exercise of employee or employee organization rights;
- c. whether the case involves an important and unresolved question of law, the prompt resolution of which would significantly benefit one or more segments of the public sector labor-management community;
- d. whether the case arises from or relates to a representation or recognition dispute;
- e. whether a court injunction is in place pending resolution of the case;
- f. the number of employees affected, the size of any potential monetary remedy, or the nature, scope, or importance of any potential non-monetary remedy; and
- g. any compelling circumstances showing that expedited processing is warranted.

(c) Required Procedures for Expedited Cases

1. In all cases falling under subparagraph (b)(1) of this Section, and in other cases after an order expediting the matter has issued, the case shall be given priority and decided on an expedited basis in the manner determined to be appropriate by, as applicable, the General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services, or the Board itself.
2. Any document filed in a case falling under subparagraph (b)(1) of this Section, or in any other case if the document is filed in a division in which the case has been expedited, shall prominently display the words "EXPEDITED CASE" on the document's first page.
3. When exceptions are pending in a case falling under subparagraph (b) of Section 32305, no [abeyance or](#) extension of time may be granted.
4. In any expedited case not falling under subparagraph (b) of Section 32305, [an abeyance may only be granted if all parties agree, and](#) an extension of time to file any document, or a request to continue a formal hearing, may be granted only when:

- a. the parties mutually agree to the extension of time or continuance;
- b. the continuance is necessary to mitigate prejudice caused by an amended pleading; or
- c. the party requesting the extension of time or continuance demonstrates extraordinary circumstances that outweigh any prejudice to other parties.

32305. Finality of Board Agent Decisions.

- (a) Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final on the date specified therein.
- (b) In cases arising under Section 32761, 32770, 32781, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, [61215](#), 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400 or 91450, and where exceptions are filed pursuant to Section 32300, the Board agent's decision shall become final unless the Board itself issues a decision not later than 180 days from the date the exceptions were filed with the Board.
- (c) The Board shall not grant [abeyances or](#) extensions of time in cases before the Board itself that are subject to subparagraph (b), above.

Attachment – Agenda Item 5. C.

PERB Regulation 32142

Requests for Accommodations for Persons with Disabilities

In proceedings where an Applicant is a person with a disability, as defined herein, and is requesting an accommodation either at the informal conference, prehearing conference, formal hearing or any other investigatory or adjudicatory proceeding before the Board, the Applicant shall be responsible for requesting accommodations.

(a) "Persons with disabilities" means individuals covered by California Civil Code section 51 et seq.; the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); or other applicable state and federal laws. This definition includes persons who have a physical or mental impairment that limits one or more of the major life activities, have a record of such impairment, or are regarded as having such an impairment.

(b) "Applicant" means any lawyer, party, witness, or other person with an interest in attending or participating in any proceeding before the Board.

(c) "Accommodations" means actions that result in services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment devices, materials in alternative formats, readers, or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to Board services, programs, or activities, alteration of existing facilities by the Board may be an accommodation.

(d) Process for Requesting Accommodations

The process for requesting accommodations is as follows:

- (1) Requests for accommodations may be presented ex parte on a form provided by the Board, in another written format, or orally. Requests must be submitted to the ADA Coordinator, within the time frame provided in (d)(3). Requests for accommodation made by a party seeking to continue a scheduled informal conference, prehearing conference, or a formal hearing, or placing the case in abeyance, may be submitted to the board agent assigned to the matter.
- (2) Requests for accommodation must include: (1) the name of the case, (2) the case number, (3) a description of the accommodation sought, and (4) a statement of the impairment that necessitates the accommodation. The Board, in its discretion, may require the applicant to provide additional information about the impairment.

- (3) Requests for accommodation must be made as far in advance as possible, and in any event, must be made no fewer than 30 days before the requested implementation date. The Board may waive this requirement for good cause.
- (4) The Board will keep confidential all information of the Applicant concerning the request for accommodation unless confidentiality is waived in writing by the applicant, disclosure is required by law, or to ensure the fairness of the proceeding. The Applicant's identity and confidential information will not be disclosed to the public or to persons other than those involved in the accommodation process, including the Board agent who will be responsible for overseeing or implementing the accommodation. Confidential information includes all medical information pertaining to the Applicant, and all oral or written communication from the Applicant concerning the request for accommodation.
- (5) Permitted communication under this rule must address only the accommodation requested by the applicant and must not address, in any manner, the subject matter or merits of the case proceedings before the Board.

(e) Response to Accommodation Request

The Board will respond to a request for accommodation by informing the Applicant in writing, as may be appropriate, in an alternative format, of the following:

- (1) That the request for accommodation is granted or denied, in whole or in part, and if the request for accommodation is denied, the reason therefore; or that an alternative accommodation is granted; and
- (2) The nature and duration of the accommodation to be provided, if any.

(f) Denial of Accommodation Request

A request for accommodation may be denied only when the Board determines that:

- (1) The applicant has failed to satisfy the requirements of this regulation;
- (2) The requested accommodation would create an undue financial or administrative burden on the Board; or
- (3) The requested accommodation would fundamentally alter the nature of the service, program, or activity provided by the Board.

(g) Review Procedure

An Applicant in which an accommodation request has been granted or denied may seek review of a determination made by the ADA Coordinator or the assigned Board agent

within 10 business days of the date of the response by submitting, in writing, a request for review to the General Counsel or Chief Administrative Law Judge.

(h) Duration of Accommodations

The accommodation by the Board must be provided for the duration indicated in the response to the request for accommodation and must remain in effect for the period specified unless (1) the Applicant requests that the accommodation be terminated, (2) the Applicant requests and the Board approves a modification to the accommodation, or (3) the Board agent determines that, in practice, the accommodation has resulted in the circumstances described in subsection (f)(2) or (f)(3) of this Regulation. The Board may provide an accommodation for an indefinite period of time for a limited period of time, or for a particular matter or appearance.