

PUBLIC NOTICE
Regular Business Meeting Agenda
Public Employment Relations Board
April 14, 2022 ~ 10:00 a.m.

LOCATION: Public Employment Relations Board *
1031 18th Street, First Floor, Room 103, Sacramento, CA

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: **160 041 8872**
4. Enter your name
5. Enter the Passcode: **9776179683**, then click "continue"

OR

To attend the meeting via teleconference:

1. Dial (669) 254-5252
2. When prompted, enter the meeting id: **160 041 8872#**
3. Press # to skip the participant id
4. When prompted, enter the meeting password: **9776179683#**

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 in person, via video or the teleconference line when prompted by the Chair at each appropriate agenda item.

1. Roll Call.
2. Adoption of Minutes. February 10, 2022 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. 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:
 - A. Proposed Regulations for Special Remedies under the Public Employee Communication Chapter: Consideration of approval for submitting a rulemaking package to the Office of Administrative Law to initiate the formal rulemaking process to add regulations for special remedies under the Public Employee Communication Chapter. The proposed regulation is attached following this agenda.

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 June 9, 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)).

Agenda Item 5B

PERB Regulation 32142

Requests for Accommodation for Persons with Disabilities

(a) Definitions

- (1) "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 or have had a physical and/or mental condition, disorder, or health impairment that limits one or more major life activities, have a record of such impairment, or are regarded as having such an impairment.
- (2) "Applicant" means any representative, party, witness, or other person with an interest in attending or participating in any proceeding before the Board.
- (3) "Accommodation" 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 limitations; relocating services or programs to accessible facilities; or providing services at alternative sites or on alternative schedules. 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.
- (4) "Proceeding before the Board" means any investigatory or adjudicatory proceeding before the Board, including but not limited to an informal conference, prehearing conference, or formal hearing, or any proceeding conducted by the State Mediation and Conciliation Service or Office of the General Counsel.
- (5) "Confidential information" under this Section means any medical or other health information obtained by the Board or voluntarily disclosed by the applicant, and all oral or written communications from the applicant concerning the request for accommodation.
- (6) "ADA Disability Coordinator" means the person designated by the Board itself to help coordinate responses to accommodation requests. In the circumstance set forth in subsection (b)(2), the Disability Coordinator shall render a decision on such a request ~~receive, consider, and make decisions regarding requests for accommodations in proceedings before the Board.~~

(b) Process for Requesting Accommodations

- (1) It is the intent of the Board that any person with a disability in need of accommodation in any proceeding before the Board have their request for

accommodation resolved directly by the ~~person~~ Board agent to whom the matter is currently assigned, or by the Chair of the Board if the matter is before the Board itself.

- (2) When an ~~initial request~~ requested for accommodation cannot be met or falls outside the scope of the assigned ~~person's~~ Board agent's authority, the assigned Board agent shall submit the request ~~a request for accommodation must be submitted~~ to the ADA Disability Coordinator. In evaluating a request for accommodation, the ADA Disability Coordinator may consult with the assigned Board agent, ~~conciliator,~~ or Chair of the Board to determine whether the requested accommodation would fundamentally alter the nature of the service, program, or activity provided by the Board.
- ~~(3) A request for accommodation may be submitted on a form provided by the Board or in another written format that substantially satisfies the requirements of (b)(4) of this Section.~~
- (3) A request for accommodation must may be made orally or in writing. A written request must include: (a) the name of the case, (b) a description of the accommodation(s) sought, and (c) a statement of the limitation(s) necessitating the accommodation. -A request to continue a formal hearing as an accommodation must comply with Section 32205. The person to whom the request is submitted, in their discretion, may require the applicant to provide, with or without verification, additional information about the limitation(s) or the requested accommodation(s), including the severity of the limitation(s), and how the requested accommodation will enable the applicant to participate in the proceeding before the Board.
- (4) Requests for accommodation must be made as far in advance as possible, but no later than 21 ~~business~~ days before the requested implementation date. The person to whom the request is submitted, in their discretion, may waive this requirement.
- (5) 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, with notice to the applicant, when the Board agent determines the disclosure is necessary 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. Persons responsible for implementing any accommodation shall be made aware of all accommodation(s) granted by the Board.
- (6) ~~Permitted communication~~ Requests for accommodation under this Section 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.

(7) At any time during the process in which this a request for accommodation is being considered, the person to whom the case is assigned, the ADA-Disability Coordinator, or the reviewing officer in Subsection-subsection (f) may place the scheduled proceeding in abeyance or grant a continuance. No continuance or abeyance shall be granted as an accommodation without affording all parties notice and an opportunity to be heard.

(c) Response to Request for Accommodation

The ~~person to whom~~ Board shall respond to a request for accommodation is ~~submitted shall respond to the request- within 5 business 10 days_ of the request by informing the applicant~~ The response shall be in writing, or in an alternative format as may be appropriate, ~~of and must include~~ 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(s) therefore; or that an alternative accommodation is granted; and
- (2) The nature and duration of the accommodation to be provided, if any. The response shall include whether the accommodation is for an indefinite period of time, for a limited period of time, or for a particular matter or appearance.

(d) Duration of Accommodations

The accommodation provided for in the response to the request for accommodation 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 (e)(1), (e)(2) or (e)(3).

(e) 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 Subsection (b);
- (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.

(f) Review Procedure

- (1) An applicant whose accommodation request has been denied or partially granted may seek review of the response within ~~40 business~~ 20 days of the date of the response by submitting a written request for review, including (a) the name of the case, (b) a description of the accommodation(s) sought, and (c) the reason(s) the response to the request for accommodation requires review. The response to the request for review will constitute the final response of the Board.
- (A) If the accommodation request was denied or partially granted by a Board agent ~~or conciliator~~, the applicant must submit a request for review ~~must be submitted~~ to the head of the division wherein the determination was made, i.e., the General Counsel, the Chief Administrative Law Judge, or the Director of the State Mediation and Conciliation Service, as appropriate.
- (B) If the accommodation request was denied or partially granted by any of the division heads listed in subsection (f)(1)(A) of this Section, the Chair of the Board, or the ~~ADA-Disability~~ Coordinator, the applicant must submit a request for review ~~shall be submitted~~ to the Board itself. The Chair of the Board shall not participate in the review of an accommodation decision rendered by the Chair.
- (2) A final response to the request for review shall occur within ~~40- 20 business~~ 20 business days of the applicant's request. The Board agent ~~person~~ assigned to the applicant's proceeding ~~of the applicant~~ shall be notified of the final response.

Agenda Item 6A

CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD

SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS

32610.2 Pre-Filing Procedures for Certain PECC Charges.

(a) An unfair practice charge alleging that a public employer violated Government Code Section 3558, subdivision (a) must allege that the exclusive representative notified the public employer in writing of the facts and theories of the alleged violation(s).

(b) The following subsections apply only to claims that a public employer violated Government Code Section 3558, subdivision (a) by supplying an inaccurate or incomplete list of employees to the exclusive representative.

(1) Except as provided in subsection (b)(2), a public employer shall not be liable for violation(s) that it cures within twenty (20) days from the date it receives written notice of the alleged violation(s) from the exclusive representative.

(2) A public employer shall not avoid liability by curing an alleged violation if, in the twelve (12) months immediately preceding its curative action, the employer has cured three or more alleged violations of Government Code Section 3558, subdivision (a). Each cured violation within the preceding twelve months shall count toward the three-cure limit regardless of the exclusive representative or bargaining unit involved.

32610.3 Special Remedies for Certain PECC Charges.

(a) (1) For purposes of this Section, "special remedies" means attorney fees and costs incurred during certain stages of PERB proceedings regarding certain PECC charges, as defined in Government Code Section 3558, subdivision (d)(2), as well as civil penalties for certain PECC violations, as defined in Government Code Section 3558, subdivision (d)(2).

(2) For purposes of this Section, a "final decision" is a decision that is no longer subject to appeal.

(b) After a final decision involving a claim under Government Code Section 3558, subdivision (a), the Office of the General Counsel shall resolve any remaining matters, including compliance and special remedies. The following procedures apply unless otherwise ordered by the Board:

(1) A prevailing party seeking an award of attorney fees and costs under this Section must file with the Office of the General Counsel and serve on all parties

a motion regarding special remedies no later than twenty (20) days after the decision is final. If the prevailing party wishes to file evidence or argument regarding a civil penalty under this Section, the prevailing party must address that issue in the same motion.

(2) A motion regarding special remedies under this Section must be accompanied by a brief and sworn declarations containing competent evidence as needed to support the motion. If civil penalties are at issue, the sworn declarations shall contain evidence relevant to the criteria in Government Code Section 3558, subdivision (d)(2). If attorney fees and costs are at issue, the sworn declarations shall address: the amount of time spent; reasonable market rates for attorneys with similar experience; and, if compensable legal work was integrated with non-compensable legal work, information necessary to determine the portion of time that should be compensated.

(3) Any response to a motion regarding special remedies under this subsection must be filed with the Office of the General Counsel and served on all parties no later than twenty (20) days after the motion was filed. Any evidence relied on in the response must be supported by sworn declarations containing competent evidence.

(4) There shall be no reply briefs unless requested by the Board agent.

(5) Prior to ruling on a motion regarding special remedies under this Section, the Board agent shall have discretion whether to request further written submissions and whether to convene an evidentiary hearing. If the Board agent determines that an evidentiary hearing is necessary, the Office of the General Counsel may transfer the matter to the Division of Administrative Law to conduct a hearing and issue a written proposed decision.

(6) If a Board agent issues an administrative decision without a hearing, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations. If the Board agent issues a written proposed decision based on a hearing, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 2 of these regulations.