

**State of California
Office of Administrative Law**

In re:
Public Employment Relations Board

Regulatory Action:

Title 08, California Code of Regulations

Adopt sections:

Amend sections: 32110(b), 32155, 95120

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100**

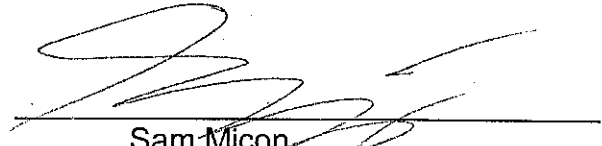
OAL Matter Number: 2023-0627-01

OAL Matter Type: Nonsubstantive (N)

In this action, the Public Employment Relations Board changes gendered language to gender neutral language and fixes other non-substantive grammatical issues.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

Date: July 27, 2023



Sam Micon
Attorney

**For: Kenneth J. Pogue
Director**

**Original: Joshua Golka ,
Copy: Joshua Golka**

NONSUBSTANTIVE

STATE OF CALIFORNIA - OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION REGULATIONS JURISDICTION

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2023-0627-01N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Public Employment Relations Board			AGENCY FILE NUMBER (If any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUL 27 2023
3:16 PM


A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Electronic Filings, Recusals, and Severance Petitions		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)			
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)					
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT			
		AMEND			
8		32110(b), 32155, 95120			
TITLE(S)		REPEAL			
3. TYPE OF FILING					
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)		
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only		
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify)				
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs., title 1, §44 and Gov. Code §11347.1)					
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d), Cal. Code Regs., title 1, §100)					
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)		
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY					
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6600)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal			
<input type="checkbox"/> Other (Specify)					
7. CONTACT PERSON Joshua Golka		TELEPHONE NUMBER (916) 297-3152	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) joshua.golka@perb.ca.gov	

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

TYPED NAME AND TITLE OF SIGNATORY
Joshua Golka, Executive Director

DATE
6/27/2023

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
JUL 27 2023
Office of Administrative Law

PROPOSED TEXT:

Please note: all underlined text indicates additions to the regulatory text and all ~~strikethrough~~ text indicates deleted material.

DIVISION 3. PUBLIC EMPLOYMENT RELATIONS BOARD

CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD

SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS

Article 2. General Provisions

32110. Electronic Filing Requirements.

(a) Except as otherwise provided by this Chapter, electronic filing is mandatory when filing documents with PERB. For the initial filing of a case, the filing party shall serve all parties pursuant to Section 32140, subsection (a), and electronically file with PERB the initial filing and a proof of service. After the initial filing of a case, service of documents shall occur automatically through ePERB, except for unrepresented individuals not utilizing ePERB, in which case the filing party must serve the documents by personal delivery, mail, or with another delivery service properly addressed. Electronic filing is not required when submitting documents at formal hearing.

(b) Electronic filing is available but not mandatory for an unrepresented individual. For purposes of this subsection, the term "unrepresented individual" shall mean an individual natural person not represented by an attorney or a union representative. However, an unrepresented individual that files electronically shall be required to electronically file all subsequent documents, and to accept electronic service, unless ~~she or he~~ they provides written notice to all parties that future filings shall occur through a different authorized means.

(c) A party filing a document through e-PERB may use an electronic signature as defined in section 32092. However, a party submitting proof of support under section 32700 of these regulations, either through e-PERB or otherwise, may rely on electronic signatures only to the extent permitted under section 32700.

(d) Documents electronically filed shall be in PDF format and text searchable. However, a party lacking the capacity to make a PDF file text searchable shall file the document in a non-text searchable PDF format, and shall telephonically notify the Board that it has done so. Unless documents are compressed (in a zip file format), the maximum size of

any single document that can be electronically filed is 25 MB. For documents larger than 25 MB, the filer shall separate them into multiple parts so that each part is no larger than 25 MB.

(e) Each document shall be filed individually. Attachments and exhibits are part of the document to which they are associated. Where a document exceeds the size limit specified under subsection (d), the document must be split into parts and each filed individually. When a document is filed in multiple parts, each part must be identified as part of the document, e.g., unfair practice charge part 1, unfair practice charge part 2, etc.

(f) Filers may electronically file a document through e-PERB at any time. However, all documents electronically filed after 11:59 p.m. on a business day, or at any time on a non-business day, will be deemed filed the next regular PERB business day. This section shall not apply to requests for injunctive relief whose filing requirements are governed by sections 32450 and 32455.

Authority cited: Sections 3509(a), 3513(h), 3524.52(a), 3541.3, 3551(a), 3555.5(c), 3563, 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3524.52(a), 3524.55, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 99561 and 99561.2, Public Utilities Code.

32155. Recusals.

(a) (1) "Recusal" means refraining from participation in a case or proceeding, including but not limited to refraining from an attempt to influence any other person with respect to the matter.

(2) "Party representative," as used in this Section, means any person who has advised a party regarding the specific events giving rise to the case or proceeding at issue, entered an appearance in the case or proceeding, or otherwise been designated by a party as that party's representative in the case or proceeding.

(b) A Board member, Board agent, conciliator, mediator, or other PERB officer, employee, or contractor shall recuse ~~himself or herself~~ themselves from a case or proceeding if any one of the following circumstances exists:

(1) ~~He or she~~ They has/have a financial interest in the outcome of the case or proceeding, or is indebted, through money borrowed as a loan, to a party, party representative, or witness in the case or proceeding.

(2) ~~He or she~~ They is/are related, by consanguinity or affinity within the third degree computed according to the rules of law, to a party, party representative, or witness in the case or proceeding.

(3) ~~He or she~~ They at any time participated in the specific events giving rise to the case or proceeding, or served as a party representative in the case or proceeding.

(4) (A) For personnel covered by this Section other than Board members and Legal Advisors, within one year prior to the initial filing date of the case or proceeding, or at any time thereafter, ~~he or she~~ they:

1. ~~was~~ were an officer, director, trustee, or employee of an entity that is a party in the case or proceeding;
2. personally served as an attorney, or as a non-attorney representative, on behalf of any person or entity that is a party or witness in the case or proceeding; or
3. held a paid position, including but not limited to a position as an employee, contractor, partner, or shareholder, with a law firm, legal department, or other organization representing a person or entity that is a party or witness in the case or proceeding.

(B) For Board members and Legal Advisors, if, within one year prior to the date that any appeal, exceptions, motion, or request in the case or proceeding was first placed on the Board's docket, or at any time thereafter, ~~he or she~~ they:

1. ~~was~~ were an officer, director, trustee, or employee of an entity that is a party in the case or proceeding;
2. personally served as an attorney, or as a non-attorney representative, on behalf of any person or entity that is a party or witness in the case or proceeding; or
3. held a paid position, including but not limited to a position as an employee, contractor, partner, or shareholder, with a law firm, legal department, or other organization representing a person or entity that is a party or witness in the case or proceeding.

(5) As a result of other circumstances, ~~he or she~~ they cannot fairly consider the case or proceeding, or the interests of justice require recusal.

(c) If a Board member learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding before the Board itself, ~~he or she~~ they shall recuse and notify the Board of such recusal. If the General Counsel, Chief Administrative Law Judge, or Division Chief of the State Mediation and Conciliation Service learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding in which ~~he or she~~ they would otherwise be directly or indirectly involved, ~~he or she~~ they shall recuse, notify the Board of such recusal, and designate a replacement to act in his or her place regarding such case or proceeding. If any other Board agent, conciliator, mediator, or PERB official, employee, or contractor learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding in which ~~he or she~~ they might otherwise be directly or indirectly

involved, ~~he or she~~ they shall notify ~~his or her~~ their supervisor, who shall take appropriate action.

(d) Any party to a case or proceeding before the Board itself may file directly with a Board member a written motion for recusal. The motion shall set forth by competent evidence all relevant facts. A motion for recusal must be filed and served on all parties no later than twenty (20) days after the party seeking recusal first knew or should have known that the Board member was eligible to be assigned to a panel in the case or proceeding and should be recused from the case or proceeding. Any response to such a motion by another party must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs unless requested by the Board. The Board member subject to the recusal motion shall decide the motion. If the motion is denied, then the party seeking recusal can seek review from the Board itself within ten (10) days from such denial. Any response by another party to such a request for review must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs regarding such a request for review, unless requested by the Board.

(e) Any party to a case or proceeding that is not before the Board itself may file a motion for recusal directly with any Board agent, conciliator, or mediator to whom the matter is assigned. Such motion shall be written, or if oral, reduced to writing within 24 hours of the motion. The motion shall set forth by competent evidence all relevant facts. A motion for recusal must be filed no later than twenty (20) days after the party first knew or should have known that the Board agent, conciliator, or mediator has been assigned a formal role in the case or proceeding. Any response to such a motion by another party must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs unless requested by the Board agent. The Board agent, conciliator, or mediator subject to the recusal motion shall decide the motion, unless otherwise ordered. If the motion is granted, a new Board agent, conciliator, or mediator shall be assigned. If the motion is denied, the party seeking recusal may, within ten (10) days after its motion for recusal is denied, file with the Board itself a request for special permission to appeal such denial. If the Board does not grant special permission to appeal the denial, the party seeking recusal may file an appeal after hearing or investigation and issuance of any decision, and may choose to combine such an appeal with an appeal or exceptions as to the merits.

(f) Any party aggrieved by the Board's determination regarding a motion for recusal may include the matter in a writ of extraordinary relief filed pursuant to Government Code Section 3509.5, 3520, 3524.73, 3542, 3564, 71639.4 or 71825.1 or Public Utilities Code section 99562 seeking judicial review of the Board's decision on the merits, or, in cases reviewed by the Board itself pursuant to Section 32635, in a writ proceeding in superior court challenging the Board's refusal to issue a complaint.

(g) Nothing herein shall preclude any person subject to recusal from invoking the rule of necessity as provided for under section 87101 of the Government Code.

Authority cited: Sections 3509(a), 3513(h), 3524.52(a), 3541.3(g), 3551(a), 3555.5(c), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, 125521, Appendix 1, Section 4.4 and Appendix 2, Section 13.91, Public Utilities Code.

Reference: Sections 3509, 3509.5, 3513, 3520, 3524.52(a), 3524.73, 3541.3, 3542, 3551(a), 3555.5(c), 3557, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561, 99562, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

CHAPTER 10. JUDICIAL COUNCIL EMPLOYER-EMPLOYEE RELATIONS ACT

SUBCHAPTER 1. REPRESENTATION PROCEDURES

Article 2. Severance Petition

95120. Board Determination Regarding Proof of Support - Severance Petition.

(a) Within 20 days of the date of service of the severance petition, the employer shall file with PERB an alphabetical list, including job titles or classifications, of employees employed in the claimed unit as of the last date of the payroll period immediately preceding the date the petition was filed with PERB, unless otherwise directed by the Board.

(b) If, after initial determination pursuant to Section 32700 that the proof of support is insufficient, the Board shall allow up to 10 days or until the last day of the "window period" as defined by Section 95000, whichever occurs first, to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency or lack thereof regarding the proof of support.

Authority cited: Section 3524.52(a), Government Code. Reference: Section 3524.74, Government Code.