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Cal/OSHA Appeals Board: What a First-Time Employer Should Expect

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First published at mcneilsafetyconsulting.com/blog/cal-osh-appeals-board-process-first-time-employer/

Most California employers who receive a Cal/OSHA citation have never been through an administrative hearing, and the first notice from the Occupational Safety and Health Appeals Board lands with no context. The process is not a courtroom drama, but it has its own vocabulary, deadlines, and rules in Title 8, and an employer who does not understand them can lose on procedure before anyone looks at the facts. This article walks through what happens after you file, from docketing to decision, so a first-time appellant knows what to expect.

Where the Appeals Board Fits

The Appeals Board is separate from the Division of Occupational Safety and Health, the agency that inspects and issues citations. When you appeal, the Division becomes the opposing party and the Board becomes the neutral decision-maker. Its rules of practice are in Title 8, Sections 345 through 397. Under Title 8, Section 361, an employer may appeal any citation or penalty on the grounds set out in Labor Code Section 6600.

I have covered the deadline and the informal conference in earlier posts, so briefly: under Title 8, Section 359, an appeal is timely if the intent to appeal is mailed to or received by the Board within 15 working days of the date the employer received the citation. Working days exclude weekends and state and federal holidays. Late appeals require a written showing of good cause, and Section 359 says plainly that settlement talks that never produced an executed agreement are not good cause. Do not let a friendly conversation with the district office run out the clock.

Step One: The Intent to Appeal

Section 359 allows the intent to appeal to be made by telephone, in writing, in person at the Board's main office, or online through the OASIS system. Nearly every employer I work with files through OASIS. You will need the inspection number, the citation issuance date, the date you received it, and, for each item you contest, the item number, classification, proposed penalty, abatement status, and the regulation cited. You will also state whether you are handling the appeal yourself or through a representative. An attorney or a safety consultant can represent you.

Step Two: Docketing and Perfecting

This is where first-timers stumble. Under Title 8, Section 359.1, an appeal is docketed when you submit the required contact and citation details. The Board then reviews it for completeness. If something is



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missing, you have 20 days from the Board's written or electronic acknowledgement to supply it. Miss that window and the appeal can be dismissed, leaving you with a final citation and no recourse.

The Division must send the Board a copy of the appealed citations within 15 working days after service of the appeal information. Once the Board confirms the appeal is timely and complete, it issues a Notice of Perfected Appeal, and the case is live.

Choosing Your Grounds and Defenses

Under Title 8, Section 361.3, an employer may put at issue:

- Whether the alleged violation existed at all.
- The classification of the violation.
- The abatement period.
- The reasonableness of the changes the Division required to abate.
- The reasonableness of the proposed penalty.

Section 361.3 also lists affirmative defenses, where the employer carries the burden of proof: independent employee action, compliance with a different safety order that actually applied, an exception in Title 8 that permitted the cited condition, and an invalid inspection because the Division failed to comply with the laws governing administrative searches. OASIS will not treat your appeal as complete until you select at least one ground or one affirmative defense. Section 361.3 requires affirmative defenses to be raised in a timely manner, and in my experience a defense that surfaces for the first time on the morning of the hearing does not go well.

What the Appeal Does to Abatement

Under Title 8, Section 362, abatement periods and required changes are stayed when a docketed appeal is filed, and remain stayed until the appeal is withdrawn or finally decided. That is the rule, with one practical caution: a stay is not a reason to leave a hazard in place. If the condition is a genuine risk, fix it and document that you did. Nothing in the rules penalizes early abatement, and an employer who has already corrected the problem is in a far better position on penalty than one still arguing about a hazard on the floor.

Discovery: Getting the Division's File

The Board's rules provide their own discovery tools, and Title 8, Section 372.8 makes them exclusive. The ones to know:

- **Identity of witnesses (Section 372).** On written request, you are entitled to the names and addresses of the witnesses the other side intends to call. Complainants who reported unsafe conditions are protected unless they consent.



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- **Access to documents (Section 372.1).** You can request to inspect and copy the other side's documents, including witness statements, proposed evidence, and inspection reports. The receiving party has 30 days to arrange a time, or 30 days to serve a written claim of privilege.
 - **Subpoenas, depositions, and motions to compel (Sections 372.2, 372.3, and 372.6).** These exist but are used more sparingly than in civil litigation.

The gap I see most often is employers who never request the inspection file. The compliance officer's notes, photographs, and measurements are the case against you. You cannot evaluate a settlement offer or build a defense without them.

Prehearing Conference and Motions

Under Title 8, Section 374, the Board may hold a prehearing conference to simplify the issues, expedite the hearing, and give the parties a chance to resolve the appeal. You are expected to stipulate to undisputed facts, identify your exhibits and any objections to the other side's, and report on discovery. Section 374 authorizes sanctions on an unprepared party, including excluding evidence or precluding a party from contesting a position on a disputed issue.

Written prehearing motions under Title 8, Section 371 are due at least 20 days before the hearing, oppositions within 10 days of service, and replies 5 days before the hearing. Late motions need a declaration showing good cause. Under Section 374.1, either side may file a statement of position or trial brief at any time before the hearing, and I recommend doing so on any contested legal issue.

Expedited Cases

If you were cited for a serious violation and abatement is on appeal or has not occurred, Title 8, Section 373 requires the Board to expedite: a status conference within 30 days of the appeal being perfected, a prehearing conference within 60 days of that, and a one-day hearing within 60 days of the prehearing conference. Expedited hearings default to videoconference. In this track you do not have months to gather documents. Start on day one.

The Hearing and After

Hearings are conducted by an administrative law judge appointed by the Board. Under Title 8, Section 376, the notice states the dates, length, and format, which may be in person, by videoconference, or both. Under Section 376.1, testimony is under oath, and each party may call and examine witnesses, introduce exhibits, cross-examine, and rebut. The judge defines the issues and the order of evidence before the hearing begins. It is less formal than superior court, but it is not casual. Bring your witnesses and originals of your training records and written programs, and expect the compliance officer to testify in detail.

The judge issues a written decision. Under Title 8, Section 390, a party aggrieved by that decision has 30 days from service to petition the Board for reconsideration.



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Most appeals I have been involved in resolve before a hearing. Section 374.3 provides for settlement conferences, and Section 364.2 lets the Board issue a Settlement Order once it has jurisdiction. The order becomes final 30 days after the Notice of Acceptance is served unless a petition for reconsideration is filed. A good settlement often reclassifies a citation or reduces penalties in ways that matter for future repeat exposure.

What to Do Now

- Calendar the 15-working-day deadline from the day the citation was received, and file the intent to appeal through OASIS well before it.
- Respond to any Notice of Incomplete Appeal within 20 days of the Board's acknowledgement.
- Decide which grounds and affirmative defenses under Section 361.3 you can actually support, and raise them at the outset.
- Serve written requests for witness identities and document access under Sections 372 and 372.1 as soon as the appeal is perfected.
- Abate any real hazard now and document it, regardless of the stay under Section 362.
- Gather your IIPP, training records, inspection logs, and district office correspondence into a single case file.
- Prepare for the prehearing conference as if it were the hearing: stipulations, exhibit list, objections, and a realistic settlement position.

If you have a citation on appeal and want someone who has sat through these hearings on both the technical and the procedural side, McNeil Safety Consulting can help. Learn more about our [OSHA violation defense services](#) or call **(626) 546-9384**.

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