

AGRICULTURAL LABOR RELATIONS BOARD

NOTICE OF PROPOSED REGULATORY ACTION **TO ADOPT TITLE 8, SECTION 20169 AND TO AMEND SECTIONS 20170,** **20234, 20240, 20241, 20242, 20282, 20286, 20363, 20393, 20240, 20401, 20402, 20407,** **and 20408**

April 2016

Notice is hereby given that the Agricultural Labor Relations Board (ALRB or Board), pursuant to the authority vested in it by section 1144 of the Labor Code to make, amend, or rescind rules and regulations as may be necessary to implement, interpret, and make specific the provisions of the Agricultural Labor Relations Act (ALRA) (Labor Code sec. 1140, et seq.), proposes to adopt section 20169 and to amend sections 20170, 20234, 20240, 20241, 20242, 20282, 20286, 20363, 20393, 202400, 20401, 20402, 20407, and 20408. The proposed regulations implement and make specific section 1151.4(a) of the Labor Code. The Board's regulations are codified in Title 8, California Code of Regulations, section 20100, et seq. The proposed amendments are described below in the Informative Digest. An initial statement of reasons for the amendment of these regulations, along with the text of proposed amendments, has been prepared by the ALRB and is available upon request by contacting J. Antonio Barbosa, Executive Secretary, Agricultural Labor Relations Board, 1325 J. Street, Suite 1900, Sacramento, CA 95814, (916) 653-3741, Fax: (916) 653-8750, e-mail: jbarbosa@alrb.ca.gov or Laura Heyck, Board Counsel, Phone: (916) 651-7623, Fax: (916) 653-8750. e-mail: Laura.Heyck@alrb.ca.gov. This notice, as well as the initial statement of reasons and text of the proposed regulation, also may be found on the Board's website at www.alrb.ca.gov. The final statement of reasons, once it has been prepared, shall be available in the same manner as the initial statement of reasons. The rulemaking record, which contains all the information upon which this proposal is based, is available for inspection and copying at the address above.

The ALRB invites all interested persons to submit written comments on the proposed amendments. Comments must be received at ALRB headquarters at the address listed above by 5:00 p.m. on June 20, 2016. A public hearing is not scheduled. However, any interested person or his or her duly authorized representative may submit, in writing, no later than Monday, June 6, 2016, a request that a public hearing be held on the proposed amendments.

ADOPTION OF PROPOSED REGULATION

After the comment period closes, and a hearing, if requested, is held, the Board will consider all public comment, written and oral, and decide whether to make any changes to the proposed amendments. The Board may adopt the proposed amendments if no substantial changes are made. If the Board decides to make substantial changes that are "sufficiently related" to the initial proposals, the public will be given notice of those changes and will be given at least 15 days to provide comment. If the Board decides to make "major" changes to the proposals that are "not sufficiently related to" the initial proposals, a new notice of proposed action will issue allowing for a new 45-day comment period.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The proposed regulations outline the processes and procedures for use of electronic filing and service on the Board in section 1151.4(a) of the Labor Code. Currently, the ALRA provides for service of documents in Section 1151.4(a):

Complaints, orders, and other process and papers of the board, its members, agents, or agency, may be served either personally or by registered mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as provided in this subdivision shall be proof of service of the same.

In today's world of high-speed communications, the telegram has long been replaced by the use of facsimile (fax) and electronic mail (e-mail). In the legal setting, for the purposes of serving and filing documents, electronic filing (e-filing) and electronic submission (e-submission) have become commonplace.

The current regulations, which provide the rules on service of documents, are contained in section 20164 Service of Papers by the Board or on the Board, section 20166 Service on Others of Papers Filed with the Board and section 20168 Provisions for Use of Facsimile Machines and Expedited Service.

The methods of service now provided for by the ALRA and the regulations have not kept up with the changes being implemented by the State judiciary of California as codified in section 1010.6 of the Code of Civil Procedure and in Rule 8.71 of the California Rules of Court and by the other preeminent labor relations agencies, nationally by the National Labor Relations Board (NLRB) at section 102.114 NLRB Rules and Regulations 1 and within our State by the Public Employee Relations Board (PERB) at section 32135 CCR, title 8. Both of these agencies now permit optional electronic filing.²

The Board's currently existing methods of service are not in keeping with initiatives sponsored by the State of California to conserve natural resources, such as trees, by reducing the amount of paper used; by initiating and promoting the use of e-filing by the Board and by the parties which litigate in front of the Board, the Board will proactively help reduce pollutants including fuel emissions (courier services, USPS, litigant staff driving to drop-off points, etc.).

Adoption of e-filing will reduce the time now spent by Board staff on the processing of paper originals and copies of any documents served through the currently codified methods of service. Board staff efficiency would increase and would free them to address other duties more quickly. Delivery of documents to Board counsel, the Executive Secretary and the Board would be quicker as the creation of paper copies with accompanying distribution would become unnecessary. This creates greater efficiency, reduces costs in paper and in copier toner and inks. It will allow the appropriate legal staff to immediately review documents, on their computers, rather than having to wait for copies to be created.

E-mail, which will be our vehicle for e-filing, is now a routine and common-place method of communication. Parties, counsel and others will not have to learn any new procedures or acquire new programs in order to use the agency's e-file method as they are already quite familiar with common e-mailing. Adoption of e-filing will reduce mailing costs (postage, couriers, etc.) paper and other supply costs, reduce file storage costs and staff costs for litigants. It will give them faster and easier access to served papers, briefs and exhibits. There would be no cost for parties to avail themselves of the e-filing option. With respect to information security, e-filing would be safe and secure and in compliance with all security protocols established for state agencies.

¹ In NLRB General Counsel Memorandum, GC 08-01 December, 5, 2007, then General Counsel Meisberg noted that the initial efforts of the NLRB to use e-filing commenced in July 2002. For 2007, he reported that "During FY 2007, field offices received over 4,000 electronic submissions through the Agency's E-filing process and the Office of Appeals received over 1,000 such submissions."

² "At least 25 states, the District of Columbia and federal trial courts are now using an e-filing method..." See page 7, Report of the California Senate Judiciary Committee on AB 2073, (reg. Session 2011-2012) undated, 2012.

Allowing optional e-filing may increase access to justice for all the stakeholders who come before the Board. However, being mindful that many individuals who may or will represent themselves in front of the Board might not have computers or otherwise might not have access to the internet, it would be inappropriate to require that e-filing be mandatory. Therefore, under the proposed regulations, e-filing will be a voluntary option for the service of documents on or by parties and on or by the Board.

INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATIONS

After evaluating the proposed regulations for any other related regulation in this area, the Board found that these are the only regulations concerning electronic filing and service for the Board. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

RULEMAKING FILE

Pursuant to Government Code sections 11346.5 and 11347.3, the Board shall maintain a rulemaking file containing all materials considered in the rulemaking process.

The file currently contains:

1. A copy of this notice
2. A copy of the Initial Statement of Reasons
3. Text of the Proposed Amendments.

As other materials are received, such as written comments, studies, reports, etc., they will be added to the rulemaking file. The file is available for inspection at the headquarters office of the ALRB, 1325 J. Street, Suite 1900, Sacramento, CA, during normal business hours.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Board concludes it is (1) unlikely that the proposal will eliminate any jobs, (2) unlikely that the proposal will create an unknown number of jobs, (3) unlikely that the proposal will create an unknown number of new businesses or will eliminate any existing businesses and (4) unlikely that the proposal will expand existing businesses.

BENEFITS OF THE PROPOSED ACTION

The proposed regulations will reduce the time spent by Board staff on the processing of paper originals and copies of any documents served on the Board while increasing Board staff efficiency and reducing costs in paper, copier toner and inks. The proposed regulations will also reduce parties' mailing costs (postage, couriers, etc.) as well as paper and other supply costs. By reducing paper and other supply costs the proposed regulations assist in conserving California's natural resources, benefiting the health and welfare of all Californians.

ALTERNATIVES TO PROPOSED ACTION

The Administrative Procedure Act requires that the Board, in taking any regulatory action, must determine that no alternative is considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The proposed regulation contemplates the use of the Board's existing Microsoft Outlook email system. The Board presently does not have the resources to create or purchase an electronic filing service provider (EFSP), such as "TrueFile" for uploading, submitting and managing documents. Therefore, there is currently no reasonable or more cost effective alternative to the proposed regulation.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

- A. The proposed regulatory changes would not impose any mandate on local agencies or school districts.
- B. Estimated fiscal impact on local government or school districts: None.

- C. The proposed changes would result in no cost or savings to any state agency, or cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code, nor impose other nondiscretionary cost or savings on local agencies or affect cost or savings in federal funding.
- D. Cost or savings in any federal funding to the state: None.
- E. Fiscal effect on private persons or businesses directly affected: No increase in costs. The ALRB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- F. The proposed changes would have no effect on small business because the changes impose no new burdens upon parties appearing before the Board.
- G. The proposed changes would have no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- H. The proposed changes would have no effect on the creation or elimination of jobs within the State of California, no effect on the creation of new businesses or the elimination of existing businesses within the State of California, and no effect on the expansion of businesses currently doing business within the State of California as stated above in the Informative Digest/Policy Statement Overview. The benefits of the proposed regulations are increased staff efficiency and a decrease in paper products.
- I. The proposed changes would have no effect on housing costs.

LOCAL MANDATES STATEMENT

The proposed regulatory changes would not impose any mandate on local agencies or school districts.

INQUIRIES

Any inquiries concerning any aspect of the proposed regulatory action noticed herein should be directed to J. Antonio Barbosa, Executive Secretary, Agricultural Labor Relations Board, 1325 J. Street, Suite 1900, Sacramento, CA 95814, (916) 653-3741, Fax: (916) 653-8750, e-mail: jbarbosa@alrb.ca.gov or Laura Heyck, Board Counsel, Phone: (916) 651-7623, Fax: (916) 653-8750. e-mail: Laura.Heyck@alrb.ca.gov. Questions concerning the substance of the proposed amendments may be directed to Laura Heyck.