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## Important Changes to PERB Regulations Effective January 1, 2022

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Various amendments to the Public Employment Relations Board (PERB) regulations took effect on January 1, 2022, which are likely to impact public agencies with unfair labor practice charges and other matters pending before PERB. These changes include new deadlines for the filing of motions before a formal hearing, amended procedures for the use of subpoenas, new requirements for requesting a continuance of a formal hearing, and new procedures and deadlines for filing exceptions to proposed decisions. The changes are summarized below, and the text of the new regulations is available [here](#):

**1. Motions:** The prior regulations did not include deadlines for filing motions before a formal hearing. The amended regulations require that motions to strike an allegation, to defer a case to arbitration, or to dismiss or partially dismiss a complaint must be filed no later than 45 days prior to the first day of hearing, unless otherwise ordered by the PERB agent assigned to the matter. Responses to such motions must now be filed within 20 days (previously 14 days) of service of the motion, unless otherwise designated by the PERB agent. These deadlines do not apply to proceedings designated for expedited treatment, which are left to the discretion of the PERB agent. (PERB Reg. 32190.)

**2. Subpoenas:** The amended regulations distinguish between a “testimonial subpoena” and a “records subpoena” and include timelines for serving both. A “testimonial subpoena” requires a witness to appear at a formal hearing, and must be served within 10 days before the date on which the witness must testify. A “records subpoena” requires production of records and may require a witness to appear to testify at a formal hearing, and must be served within 20 days before the records must be produced. A motion to revoke or limit a “testimonial subpoena” may be filed and served on the requesting party or made orally at the formal hearing. A motion to revoke or limit a “records subpoena” must be made no later than 12 days after service of the subpoena. Additionally, as an alternative to seeking Superior Court enforcement of a subpoena, the amended regulations allow the administrative law judge (ALJ) to draw an “adverse inference” from a party’s failure to comply with a valid subpoena. (PERB Reg. 32150.)

3. **Continuances of a Formal Hearing:** A party may file a written request to continue a formal hearing seven days (previously five days) prior to the formal hearing. Any requests filed fewer than seven days before the formal hearing must now demonstrate “extraordinary circumstances.” (PERB Reg. 32205.)
4. **Exceptions to a Proposed Decision:** Prior regulations did not include a word limit when filing a statement of exceptions to a proposed decision or for any response to a statement of exceptions, but the amended regulations include a 14,000 word limit for both. A party may request permission to file a statement of exceptions or response exceeding 14,000 words with PERB itself no later than five days before the exceptions are due. However, a party that is both responding to exceptions and filing cross-exceptions is permitted to submit up to 28,000 words total without requesting permission. The regulations also now expressly permit the filing of a reply brief within 10 days following the filing of the response to exceptions or cross-exceptions, which is limited to 5,000 words. (PERB Regs. 32300, 32310, and 32312.)

## Takeaways

The amended PERB regulations include strict timelines and requirements regarding the filing of motions, the use of subpoenas, requirements for requesting a continuance of a formal hearing, and filing of exceptions to proposed decisions. In some instances, if such deadlines or requirements are not met, an agency may forfeit their right to utilize such procedures or find themselves at the mercy of the PERB agent’s discretion to allow or deny the use of these procedures. As such, it is critical to update internal processes and consult with your legal counsel to ensure all timelines and requirements are met when participating in PERB proceedings.

If you have questions about these amended regulations, or about PERB matters or public employee relations in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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