

FREQUENTLY ASKED QUESTIONS

(During COVID-19 pandemic emergency)

The following provides general information in an FAQ (frequently asked questions) format about a workers' compensation case that has been appealed from a decision of the Director of Labor and Industrial Relations ("Director") to the Labor and Industrial Relations Appeals Board ("LIRAB") during the COVID-19 pandemic emergency. The following statements of general information are not rules or regulations and further do not supersede or supplement any state law or administrative rule or regulation. They are not a substitute for independent research, analysis of the law, or legal advice.

These FAQs are also available on LIRAB's website. ([Click here](#)).

Sample forms are available on LIRAB's website. ([Click here](#)).

QUESTIONS ABOUT LIRAB

Where is LIRAB's Office?

LIRAB is located at the Keelikolani Building, 830 Punchbowl Street, Room 404, Honolulu, Hawaii, 96813.

How is LIRAB conducting conferences, hearings, and trials during the COVID-19 pandemic emergency?

In response to concerns surrounding COVID-19, the Board will be using Microsoft Teams for conferences and hearings in lieu of in-person appearances, for the foreseeable future.

Information about joining meetings using Teams may be found [here](#).

What are LIRAB's hours of operation?

LIRAB's regular business hours are from 7:45 a.m. to 4:30 p.m. LIRAB is closed on Saturdays, Sundays, and State Holidays.

What is LIRAB's telephone number?

LIRAB's telephone number is (808) 586-8600.

Who makes up LIRAB?

LIRAB is a three-member panel or board. Currently, all LIRAB members are licensed Hawaii attorneys. One LIRAB member will be assigned to oversee or manage your case. If your case goes to trial, LIRAB or its Hearings Officer will hear the case and make a decision. A decision of LIRAB requires concurrence by at least two members of LIRAB.

What does LIRAB do?

LIRAB's primary function is to provide an impartial, independent review of appeals from decisions of the Director. LIRAB also decides motions and conducts settlement and other conferences to assist with disposition of cases on appeal. LIRAB DOES NOT PROVIDE LEGAL ADVICE OR ADVOCATE FOR ANY PARTY.

GENERAL QUESTIONS ABOUT APPEALS

What happens now that my case has been appealed to LIRAB?

Once an appeal is taken, the Department of Labor and Industrial Relations ("Department") sends your case file to LIRAB and LIRAB sets up the file for proceedings before LIRAB. This process could take several weeks after an appeal is filed.

LIRAB will schedule and notify you of an initial conference. During the initial conference, you will be notified of other important dates and deadlines, including the dates of the settlement conference and trial.

Do I need an attorney?

There is no requirement that you hire an attorney to represent you in your workers' compensation case. However, you are strongly encouraged to retain an attorney to represent you before LIRAB. Many injured workers, and almost all employers/insurance carriers, as well as the State and Counties, are often represented by attorneys for proceedings before LIRAB. A listing of workers' compensation attorneys can be found on LIRAB's website. ([Click here](#)).

Where can I get a copy of LIRAB's rules?

The proceedings before LIRAB are more formal than the proceedings at the Department level. LIRAB's Rules of Practice and Procedure must be followed by all persons appearing before LIRAB. Not following the Rules can be could negatively impact your appeal. A printed copy of the rules may be purchased from LIRAB for \$1.00, plus postage, if applicable, or it may be printed in .pdf format from LIRAB's website. ([Click here](#)).

How may I submit documents to LIRAB ?

Pursuant to Governor David Y. Ige's 8th supplementary emergency proclamation issued on May 18, 2020, filings with LIRAB may be made via ONE of the following methods (listed in order of the LIRAB's preference), through July 31, **2021**, or the termination of the state of emergency as declared by the governor, whichever occurs first:

- a. By Email attachment, preferably secured/encrypted, to dlir.appealsboard@hawaii.gov; or
- b. By Facsimile to (808) 586-8599; or
- c. By First Class Mail.

Documents in excess of 50 pages must be filed via First Class Mail, and not by email or fax.

For emails, documents to be filed should be attached to the email. The email, itself, will not be filed.

Faxed or emailed documents received outside of LIRAB's regular business hours will be file-stamped the next working day.

If a party files a document by fax or email, LIRAB will transmit, as soon as practicable, a file-stamped copy of the document by the same means of filing, to the fax number or email address identified on the filed document. The filing party is responsible for serving a copy of the file-stamped document to all parties.

May I hand-deliver documents to LIRAB ?

If the Keelikolani Building is open to the public, documents may be filed by hand-delivery during the Board's regular business hours. However, keeping in mind the recommendations for physical distancing, the Board prefers that documents be filed by email attachment, fax, or First Class Mail, rather than hand-delivery. The Keelikolani Building is currently closed to the general public.

May I submit reports, records, or documents on digital media?

If presented for filing to LIRAB, LIRAB will file a CD or DVD containing a .pdf version of your reports, records, or documents in lieu of the paper reports, records, or documents.

The CD or DVD presented for filing must be accompanied by a paper print of the first page of each .pdf file on the CD or DVD.

The CD or DVD presented for filing must also be accompanied by an original written declaration under the penalty of perjury that includes the following representations:

1. A digital file on CD/DVD is being submitted in lieu of a paper original and the filing party requests that it be considered the original.
2. The digital file is in .pdf format and is a true and correct copy of the original paper report, record, or document.
3. The .pdf file is searchable (*i.e.*, optical character recognition).
4. The digital media and file is free of malware (*e.g.*, self-executing files, viruses, worms, Trojan horses, ransomware, spyware, adware, scareware).
5. Upon request by the Director or LIRAB, the filing party will immediately present the original paper report, record, or document(s).
6. The understanding that filing by LIRAB is not a guarantee of inclusion as evidence and that the CD or DVD and the information contained on the CD or DVD is subject to objection and/or exclusion from the record.

Is a postmark sufficient to meet deadlines?

No. Unless LIRAB specifically advises you that a postmark is sufficient, all deadlines for submitting documents mean that documents must be received at and filed by LIRAB by the applicable deadline.

Can I review my case file?

Yes, you may review the file at LIRAB. LIRAB encourages you to review the file before trial to ensure that all documents you feel are necessary to support your case are included in LIRAB's file by the appropriate deadlines.

If you wish to review your file at LIRAB, please call ahead of time to make arrangements. This will ensure that LIRAB has a place for you to review your file. During the COVID-19 pandemic emergency, please refer to the Board's Memo #4 for specific information about appointments to review your file. [Click here.](#)

I didn't know about a particular law or rule or order. Am I excused?

All parties are required to comply with the laws, rules, and orders of LIRAB. Ignorance of such laws, rules, and orders is not an excuse.

How should I dress for appearances before LIRAB?

Attorneys should dress in appropriate courtroom attire for trial and other hearings. Other business attire is appropriate for conferences.

Business attire or Aloha wear is acceptable for non-attorney participants at trials and conferences.

Sweatshirts, sweat jackets, shorts, sweat pants, T-shirts, low-cut wear, mini skirts, etc. are not appropriate.

Do I have to give the other side information?

A copy of all documents and things filed with LIRAB must be served on the other side. Prepare and file a Certificate of Service to certify that a copy of the document (or thing) was properly served. A sample Certificate of Service form can be found on LIRAB's website. ([Click here](#)).

QUESTIONS ABOUT PRE-TRIAL PROCEEDINGS

I received a Notice of Initial Conference, what should I do?

You should confirm that your name is correctly identified in the document's caption. If it is incorrect, write to LIRAB to inform them of your legal name.

You should file an Initial Conference Statement according to LIRAB's Rules of Practice and Procedure at least three business days before the scheduled initial conference. LIRAB's Rules may be found in .pdf format. ([Click here](#)).

Where can I get a sample of an Initial Conference Statement?

A sample form of an Initial Conference Statement can be found on LIRAB's website. ([Click here](#)).

What is the Initial Conference?

The purpose of the initial conference is to identify the issues that the parties want LIRAB to decide and to answer questions that anyone may have regarding the appeal. If you appealed the case, you must tell LIRAB what part of the Director's decision you disagree with or why you are unhappy with the Director's decision. LIRAB will not and cannot decide matters that were not considered or addressed by the Director. Also, be prepared to inform LIRAB of any potential or special concerns that LIRAB needs to be aware of while handling your case.

At the initial conference, you may be asked to stipulate the file from the Department as part of LIRAB's record on appeal. This means that LIRAB wants to know if you would agree that the information that was presented to the Department is to be made part of LIRAB's file or records, and be considered by LIRAB in reaching its decision. This would include all the medical reports and letters sent to the Department, and other information about how your injury happened.

You will be given several important dates at the initial conference, including a settlement conference date, and the trial date.

You will also be given several important deadlines called "discovery deadlines". They include an unnamed witness identification deadline, medical reports deadline, live witness identification deadline, and discovery cut-off deadline.

What is the Pretrial Order?

A pretrial order with the issues, dates, and deadlines will be issued after the initial conference. This is an order of LIRAB and all parties must comply with this order. The pretrial order will also contain additional deadlines (such as for submitting exhibits) and orders regarding processing the case on appeal.

Read the pretrial order carefully. All parties are required to read and comply with the pretrial order (as well as all applicable laws and rules.)

What issues will LIRAB decide?

LIRAB will determine issues included in the decision of the Director that have been properly appealed and identified in the pretrial order. LIRAB cannot make a decision on issues not previously decided by the Director.

What is the Settlement Conference?

The settlement conference date is the date when you attend a meeting with LIRAB to discuss whether the issues in your case can be worked out (or settled) without having to go to trial.

Generally, there are strengths and weaknesses in each case, regardless of which side you are on, and often, it is in the best interest of everyone to settle the case without having to expend the time and cost to prepare for and attend a trial and risk losing the appeal. LIRAB expects the parties to contact each other prior to the settlement conference to discuss settlement and identify or narrow their disputes before coming to the settlement conference.

The parties may also request an early settlement conference, if they believe LIRAB's assistance could help with settlement of the case.

How much time should I plan on for the conferences?

LIRAB schedules initial conferences in 15 or 30 minute intervals. Settlement and status conferences are scheduled in 45 minute intervals. However, the conferences may last shorter or longer than the time allotted.

I need to reschedule a conference. What do I do?

Rescheduling a conference may require a letter, stipulation, or motion. If in doubt as to which is required, call LIRAB to explain the reason why the conference needs to be rescheduled. If you need to reschedule the conference because of an emergency, please call LIRAB.

What is a Motion?

A party requesting LIRAB's intervention in a discovery or other pre-trial dispute, may file a written request to LIRAB. This is called a motion.

Motions must be submitted in writing, state the grounds for the request, and set forth what you want LIRAB to do.

The motion must be accompanied by a memorandum in support of the motion, and any other necessary documentation.

What is the difference between a hearing motion and a non-hearing motion?

All motions are generally considered non-hearing. That is, a hearing on the motion will not be held, and LIRAB will decide the motion on the written submissions. You must prepare, file, and serve on the other parties a Notice of Non-Hearing Motion. A sample form can be found on LIRAB's website. ([Click here](#)).

However, LIRAB may require that a hearing be held, even if the motion is submitted on a non-hearing basis.

If you want to have a hearing on the motion where the parties can present oral arguments in addition to the written submissions, you must call LIRAB to obtain a hearing date and time, and prepare, file, and serve on the other side a Notice of Hearing. A sample form can be found on LIRAB's website. ([Click here](#)).

What is Discovery? What do the different deadlines mean?

After the initial conference, the parties may proceed to the "discovery" or the information gathering stage of the case. You have the responsibility of gathering or discovering information to support your position on the issues on appeal. Because appeals to LIRAB are reviewed on a *de novo* (meaning "anew," "afresh," or "beginning again") basis, parties are allowed to present new evidence in addition to what was already presented to the Department.

You may submit medical reports or opinions by doctors, deposition transcripts, and also non-medical documents or matters that you think will support your case and help LIRAB reach a just and fair decision. You may also have witnesses to support your case. There are deadlines for the submission of the different types of information or evidence that you want to use to support your case. Any document or writing sent to LIRAB must also be provided to all other parties.

Unnamed witness identification deadline: On or before this date, you must file with LIRAB and identify doctors or other persons not previously specifically identified in your Initial Conference Statement.

Example:

1. Kimo Pascua (co-worker)
123 Aloha Lane
Honolulu, Hawaii 96813
2. Dr. Mary Smith (my doctor)
456 Mahalo Street
Honolulu, Hawaii 96813

Live witness identification deadline: On or before this date, you must file with LIRAB and identify the person(s) listed in your Unnamed Witness Identification or in your Initial Conference Statement who will testify or speak in your favor during the trial. A person not identified in your Live Witness Identification may not be allowed to testify during the trial.

Medical reports deadline: On or before this date you must file with LIRAB all medical reports and medical records from health care providers that you want LIRAB to consider.

Discovery cut-off deadline: On or before this date, you must complete your discovery of evidence and file with LIRAB all non-medical reports or documents.

What if I want to withdraw my appeal? What do I have to do?

Any withdrawal of appeal must be in writing and filed with LIRAB. A sample form of a Withdrawal of Appeal can be found on LIRAB's website. ([Click here](#)).

What if I want to have a hearing before the Director while my case is on appeal?

A case may be temporarily remanded (sent back) to the Director for determination of issues not previously decided by the Director.

Contact the other side to explain why you want a temporary remand. Ask if the other side will agree to a temporary remand. If all parties are in agreement, complete a Stipulation for Temporary Remand. ([Click here](#)). Send it to the other side for signature, and then send it to LIRAB for approval and filing. If the Stipulation is approved, the case will be sent to the Director for determination of the issues stated. LIRAB may choose to issue an order temporarily remanding the case to the Director instead of approving the stipulation.

If any party does not agree to a temporary remand, a non-hearing Motion for Temporary Remand may be filed. This motion must comply with LIRAB's rules regarding motions.

The parties reached a settlement, now what?

After a settlement is reached, one party will prepare a stipulation or settlement agreement to document the agreement. After all parties have signed the written agreement, it must be submitted to LIRAB for approval. The Department, a Deputy Attorney General, and Director may also review the settlement agreement. If it passes the review of all requisite offices, LIRAB will sign and file the written agreement, and return filed copies to the parties.

The process for approving a settlement agreement could take several weeks. Once the settlement agreement is approved, a party has 31 days from the approval date to make payments under the agreement.

How many copies of the settlement agreement should I submit?

Unless otherwise directed by the Board, submit only the original settlement agreement by email or First Class mail. After filing, the Board will provide each party a copy by email or USPS mail.

QUESTIONS ABOUT THE TRIAL

Where will the trial be held?

If the case is not settled, trial will be held remotely by either LIRAB or its Hearings Officer.

Do I have to attend the trial?

You and/or your legal representative are required to participate in the trial.

I need to reschedule or cancel a trial. What do I do?

A Motion to Continue Trial may be filed. This motion must comply with LIRAB's rules regarding motions. Keep in mind that it may take more than one week for LIRAB to issue an

order on a motion to continue the trial, so file the motion in sufficient time before the trial. If you need to reschedule the trial because of an emergency, please call LIRAB.

If the parties wish to cancel the trial because they agree to waive their right to a trial de novo, they may submit a stipulation. A sample Stipulation to Waive Discovery and/or Trial De Novo can be found on LIRAB's website. ([Click here](#)). All parties must sign the stipulation before the Board will consider cancelling the trial due to a waiver of trial de novo.

If the parties wish to cancel the trial because they reached a settlement, they may submit a Stipulation to Cancel Trial Due to Settlement. A sample Stipulation can be found on LIRAB's website. ([Click here](#)). All parties must sign the stipulation before the Board will consider cancelling the trial due to a settlement.

Alternatively, the parties may make arrangements with LIRAB to put the basic terms of the settlement on the record before LIRAB.

Is the trial recorded?

A digital record of the trial proceedings will be digitally prepared. A copy of the recording is available for \$15.00 per CD/DVD.

How much time should I plan on for the trial?

LIRAB schedules trials for 3 hours. If you believe that your trial will take more than three hours, please bring that to LIRAB's attention at the time of your initial conference. Your trial may need to be moved or require more than one session.

Can I testify at the trial?

Presenting your case may include testifying on your own behalf or calling your witnesses and asking them questions. This is called "direct examination". The opposing party has the opportunity to also ask questions of you and your witnesses. This is called "cross-examination". You may also cross-examine the opposing party's witnesses, if any. Testimony provided at trial is given under oath.

Testimony from your witnesses should be obtained in question and answer fashion.

Who goes first at trial?

Generally, the party who appealed the case goes first to present his or her case.

How many copies of my exhibits should I bring to trial?

Exhibits that you plan to use at trial should be filed by the date stated in the Pretrial Order. The Board does not require any additional copies for the trial. You should ensure that your witnesses will have access to any necessary exhibits during the trial.

How should I organize my exhibits?

LIRAB expects that exhibits be arranged in the order they are to be presented or referred to at the trial.

Claimants should mark their exhibits using letters of the alphabet (e.g., Exhibit “A”, Exhibit “B”, Exhibit “C”).

Employers should mark their exhibits using numbers (e.g., Exhibit “1”, Exhibit “2”, Exhibit “3”).

When is the record closed?

Unless otherwise ordered by LIRAB, the record is closed when the trial is completed. After the record is closed, LIRAB will not accept additional evidence.

QUESTIONS ABOUT POST-TRIAL PROCEEDINGS

What is a post-trial brief, position statement, or memorandum?

During the trial, the presiding officer may ask the parties to submit a post-trial brief, position statement, or memorandum, and may ask the parties to agree on a due date. No new evidence is allowed as part of the post-trial brief, position statement, or memorandum.

Generally, LIRAB gives the parties 30-60 days to submit simultaneous post-trial briefs, statements, or memoranda. You may ask for more or less time.

Parties use the briefs, position statements, or memoranda to summarize the evidence and their arguments in writing. You may refer to the admitted evidence you believe supports your position to LIRAB. You may also present arguments as to why such evidence supports your position, and why you should prevail on each issue on appeal.

You must send the opposing parties a copy of the post-trial brief, position statement or memorandum that you file with LIRAB.

What happens after the trial?

LIRAB will make a decision on your case after considering the written evidence submitted during the discovery period, any testimony provided at trial, appropriate oral arguments made at

trial, any written post-trial briefs, position statements, or memoranda filed after the hearing, and the record at LIRAB.

LIRAB's decision and order will be in writing and will be sent to you. It is your responsibility to regularly check your mailbox for the decision and order, as well as any written order or other communication from LIRAB or other parties in the appeal.

It is also your responsibility to keep LIRAB apprised of any changes in your address or telephone number.

If a Hearings Officer has been assigned to hear your case, the Hearings Officer will issue a proposed decision. If you disagree with the Hearings Officer's proposed decision, you may file a written statement of exceptions saying why you disagree. If you want to present oral arguments to LIRAB on your exceptions, you may file a written request to LIRAB. The exceptions and request for oral argument, if any, must be filed with LIRAB within 20 days after the filing of the proposed decision. Any opposing party may file a responsive memorandum to the written exceptions within ten days from the filing of the exceptions. LIRAB will consider the parties' respective memoranda and oral arguments, if any, and issue its decision.

What if I don't agree with LIRAB's decision?

If you do not agree with LIRAB's decision, you may appeal the decision to the Intermediate Court of Appeals of the State of Hawaii by filing a written notice of appeal with LIRAB or electronically filing a notice of appeal with the Intermediate Court of Appeals within thirty days of the mailing of LIRAB's decision. A sample written notice of appeal can be found on LIRAB's website. ([Click here](#)). Although there is a filing fee for appeals, an appealing party may seek a waiver of court and LIRAB filing fees by filing a Motion to Proceed In Forma Pauperis. A sample Motion to Proceed In Forma Pauperis can be found on LIRAB's website. ([Click here](#)). The motion must be supported by an affidavit. A sample of an Affidavit to Support Motion to Proceed In Forma Pauperis can be found on LIRAB's website. ([Click here](#)).