

**Changes to
California Code of Regulations, Title 8, Division 1
Chapter 4.5. Division of Workers' Compensation
Subchapter 2. Workers' Compensation Appeals Board--Rules of
Practice and Procedure**

§ 10770. Filing and Service of Lien Claims.

(a) Lien Claims that May Be Filed or Served:

(1) A lien claim may be filed or served only if permitted by Labor Code section 4900 et seq. An otherwise permissible lien claim shall not be filed or served if doing so would violate the premature filing restrictions of Labor Code section 4903.6(a).

(2) Except as provided in subdivision (a)(3), any lien claim that is not statutorily allowable, in whole or in part, or is filed before the lapse of the premature filing restrictions of Labor Code section 4903.6(a) shall be deemed invalid, whether or not accepted for filing, and shall be deemed dismissed by operation of law.

(3) Claims for medical-legal costs and other claims of costs are not allowable as a lien against compensation. Nevertheless, a claim for medical-legal costs or other claims of costs may be filed as a lien claim. If, however, a lien claim includes medical-legal costs or other claims of costs:

(A) the filing person or entity shall pay the lien filing or lien activation fees, if required by Labor Code sections 4903.05(ed) and 4903.06; and

(B) if the person or entity fails to pay any requisite filing fee or lien activation fee within the time limits specified by Labor Code sections 4903.05(ed) and 4903.06, the entire lien claim shall be deemed dismissed by operation of law.

(b) Format of Lien Claims:

(1) Electronically-filed lien claims:

(A) A section 4903(b) lien, a claim of costs lien and any lien form that includes either or both of these liens shall be filed electronically. Any lien submitted in paper form in violation of this subparagraph:

(i) shall not be deemed filed for any purpose, whether or not it was accepted for filing;

(ii) shall not toll or extend the time for filing a lien claim under Labor Code section 4903.5;

(iii) shall not be acknowledged or returned to the filer; and

(iv) may be destroyed at any time without notice.

(B) All other lien claims may be filed electronically.

(C) Any electronically submitted lien claim shall be deemed filed only if it utilizes an e-form approved by the Appeals Board and it is submitted in accordance with the requirements of:

(i) the electronic filing or JET-filing procedures established by the Administrative Director under sections 10205.11 and 10206 et seq., including the Business Rules and Technical Specifications they incorporate by reference; or

(ii) any other administrative procedures or standards for electronic filing established by statute, regulation, en banc decision of the Appeals Board, published appellate opinion or policy of the Administrative Director, applying to documents to be filed with the Workers' Compensation Appeals Board.

(2) Non-electronically-filed lien claims:

(A) All other lien claims shall be filed utilizing an optical character recognition (OCR) lien claim form approved by the Appeals Board and completed in compliance with section 10205.10(c), unless the lien claimant is excepted by parts (A) through (C) of section 10205.10(c)(5).

(B) Lien claimants set forth in parts (A) through (C) of section 10205.10(c)(5) may file a lien claim utilizing an approved recognition OCR form or a non-OCR paper lien form completed in compliance with section 10205.10(e).

(3) The claims of two or more providers of goods or services shall not be merged into a single lien. However, an individual provider may claim more than one type of lien on a single lien form by marking the "Other Lien(s)" checkbox on the form and by specifying the nature and statutory basis for each lien in that checkbox's associated text box.

(c) Requirements for Filing Lien Claims with the Workers' Compensation Appeals Board:

(1) The requirements of this subdivision shall apply to all lien claims, whether or not filed electronically.

(2) Only original (i.e., initial or opening) lien claims shall be filed. Except as provided in subdivisions (g) or (h) of section 10393 or as ordered by the Workers' Compensation Appeals Board, no amended lien claims shall be filed. Any amended lien previously filed or lodged for filing may be destroyed without notice.

(3) The following documents shall be concurrently filed with each lien claim:

(A) a proof of service;

- (B) the verification under penalty of perjury required by section 10770.5;
 - (C) a true and correct copy of any assignment of the lien, if required by Labor Code section 4903.8(a) and (b);
 - (D) the declaration under penalty of perjury required by Labor Code section 4903.8(d); and
 - (E) any other declaration or form required by law to be concurrently filed with a lien claim.
- (4) Unless the lien claimant is concurrently filing an initial (case opening) application in accordance with section 10770.5, a lien claim shall bear the adjudication case number(s) previously assigned by the Workers' Compensation Appeals Board for the injury or injuries.
- (5) Any person or entity filing a section 4903(b) lien and/or a claim of costs lien shall not file any such lien unless it has paid the requisite lien filing fee.

If the lien claimant asserts it is exempt from payment of the filing fee because it is not filing a section 4903(b) or claim of costs lien or because it is an entity specified in Labor Code section 4903.05(d)(7), it shall indicate this in the designated field of the lien form.

Any lien claim filed in violation of this provision shall be deemed dismissed by operation of law.

(6)(A) For medical treatment provided on or after July 1, 2013, a section 4903(b) lien shall not be filed if the only remaining dispute(s) must be resolved by the independent medical review procedures established by Labor Code sections 4610.5, 4610.6, 4616.3 and 4616.4 and/or by the independent bill review procedures established by Labor Code sections 4603.2, 4603.3 and 4603.6.

(B) Nothing in this subdivision shall preclude a medical treatment lien claimant from filing a lien claim if there are other outstanding disputes, including but not limited to injury, employment, jurisdiction or the statute of limitations.

(7) Any lien claim or supporting documentation submitted in violation of subdivisions (c)(1) through (c)(6) shall not be deemed filed for any purpose, shall not be acknowledged or returned to the filer, and may be destroyed at any time without notice.

(8) The service of a lien claim on a defendant, or the service of notice of any claim that would be allowable as a lien, shall not constitute the filing of a lien claim with the Workers' Compensation Appeals Board within the meaning of its rules of practice and procedure or within the meaning of Labor Code section 4903.1 et seq., including but not limited to section 4903.5.

(9) Where a lien has been served on a party, that party shall have no obligation to file that lien with the Workers' Compensation Appeals Board.

(d) Service of Lien Claims and Supporting Documentation on the Parties.

(1) All original and amended lien claims, and all related documents, including supporting documentation and any document listed in subdivision (c)(3), shall be served on:

(A) the injured worker (or, if deceased, the worker's dependent), unless:

(i) the worker or dependent is represented by an attorney or other agent of record, in which event service may be made solely upon the attorney or agent of record; or

(ii) the underlying case of the worker or dependent has been resolved. For purposes of this subdivision, the underlying case will be deemed to have been resolved if:

(I) in a stipulated findings and award or in a compromise and release agreement, a defendant has agreed to hold the worker or dependent harmless from the specific lien claim being filed and has agreed to pay, adjust or litigate that lien claim;

(II) a defendant had written notice of the lien claim before the lien was filed and, in a stipulated findings and award or in a compromise and release agreement, that defendant has agreed to pay, adjust or litigate all lien claims;

(III) the application for adjudication of claim filed by the worker or the dependent has been dismissed, and the lien claimant is filing or has filed a new application; or

(IV) the worker or the dependent chooses not to proceed with his, her or their case.

(B) any employer(s) or insurance carrier(s) that are parties to the case and, if represented, their attorney(s) or other agent(s) of record.

(2) The full statement or itemized voucher supporting the lien claim or amended lien claim shall include:

(A) any amount(s) previously paid by any source for each itemized service;

(B) a statement that clearly and specifically sets forth the basis for the claim for additional payment;

(C) proof of ownership of the debt if the lien claimant is not the original service provider or is not an entity described in Labor Code sections 4903.05(d)(7) or 4903.06(b); and

(D) a declaration under penalty of perjury under the laws of the State of California that all of the foregoing information provided is true and correct.

(3) When serving an amended lien claim, the lien claimant shall indicate in the box set forth on the lien form that it is an "amended" lien claim.

(e) The lien claimant shall provide the name, mailing address and telephone number of a person with authority to resolve the lien claim on behalf of the lien claimant.

(f) For purposes of this subdivision, an “amended” lien includes:

- (1) a lien that is for or includes additional services or charges for the same injured employee for the same date or dates of injury;
- (2) a lien that reflects a change in the amount of the lien based on payments made by the defendant; and/or
- (3) a lien that has been corrected for clerical or mathematical error. A subsequent lien claim that adds an additional adjudication case number or numbers is an “amended” lien with respect to the adjudication case number(s) originally listed.

(g) Within five business days after a lien has been resolved or withdrawn, the lien claimant shall provide written notification to:

- (1) the Workers’ Compensation Appeals Board;
- (2) the party defendant(s) or, if represented, their attorney(s); and
- (3) the worker or dependent(s) or, if represented, the attorney(s) for the worker or dependent(s), except that no such notification is required if the underlying case has been resolved as provided in subdivision (d)(1)(A)(ii)(I) through (IV).

For purposes of this section, a lien is not “resolved” unless payment in accordance with an order or an informal agreement has in fact been made and received.

If the notification of lien resolution or withdrawal is being filed by a lien claimant's attorney or non-attorney representative, then a copy shall also be served on the lien claimant. If the notification is being filed by a lien claimant who is represented, then a copy shall also be served on the attorney or non-attorney representative. In either case, the written notification shall include a request to end-date both the lien claimant and its representative as case participants in EAMS.

(h) When a lien claimant notifies the Workers’ Compensation Appeals Board in writing that its lien has been resolved or withdrawn, the lien claim shall be deemed dismissed with prejudice by operation of law. Once a lien claim has been so dismissed, the lien claimant shall be excused from appearing at any noticed hearing.

(i) The Workers’ Compensation Appeals Board shall either serve or, under sections 10500(a) and 10544, cause to be served notice on all lien claimants of each hearing scheduled, whether or not the hearing directly involves that lien claimant's lien claim.

(j) Inclusion of the injured employee’s Social Security number on a lien form is voluntary, not mandatory. A failure to provide a Social Security number will not have any adverse consequences. Nevertheless, although a lien claimant is not required by law to include the

employee's Social Security number, lien claimants are encouraged to do so because this will facilitate the processing and filing of the lien claim. Social Security numbers are used solely for identification and verification purposes in order to administer the workers' compensation system. A Social Security number will not be disclosed, made available or otherwise used for purposes other than those specified, except with the consent of the applicant, or as permitted or required by statute, regulation, or judicial order.

(k) Any violation of the provisions of this section may give rise to monetary sanctions, attorney's fees and costs under Labor Code section 5813 and Rule 10561.

(l) The provisions of subdivisions (c)(3)(D), (c)(7), (c)(8) and (d)(2) shall not apply to any notice of claim or lien claim of:

(1) the Employment Development Department;

(2) the California Victims of Crime Program;

(3) any lien claimant listed as being excepted under parts (A) through (C) of section 10205.10(c)(5);

(4) any governmental entity pursuing a lien claim for child support or spousal support; and

(5) the Uninsured Employers Benefits Trust Fund.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4903, 4903.05, 4903.06, 4903.8, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 4603.2, 4603.3, 4603.6, 4610.5, 4610.6, 4616.3, 4616.4, 4622 and 5813, Labor Code; Sections 9792.5, 9794, 9795.4, 10561 and 10770.5, title 8, California Code of Regulations.

§ 10770.7. Requirement for Liens Filed Before January 1, 2017.

Any section 4903(b) lien that is subject to a filing fee pursuant to section 4903.05 and that is filed before January 1, 2017 shall be dismissed unless, on or before July 1, 2017, the lien claimant electronically files, in accordance with Article 4 of the Workers' Compensation Appeals Board Rules of Practice and Procedure, a Supplemental Lien Form and 4903.05(c) Declaration on the form approved by the Appeals Board.

Authority: Sections 133, 5307 and 5708, Labor Code.

Reference: Sections 4903, 4903.05, Labor Code; Sections 9792.5, 9794, 9795.4, 10390 et seq., 10561, 10770, and 10770.5, title 8, California Code of Regulations.