How to Contest an OSHA Violation

What to do if you think OSHA has unfairly cited you, fined you too much or asked you to take abatement measures that are completely unrealistic.

OSHA issues about 90,000 citations per year. Believe it or not, some of these citations aren't fair. If you get hit with what you consider to be an unfair citation, you must act fast. You have only 15 working days to file the necessary paperwork. If you make a mistake or miss the deadline, the citation becomes a final order and you lose your chance to contest it. Here's a look at what you need to do to preserve your rights. There's also a Model Notice in the Tools section that you can use if you want to challenge a citation.

The Notice of Contest

The document you must file to challenge an OSHA citation is called a "notice of contest." It lets OSHA know you disagree with the citation and reserve the right to fight it at a later agency hearing. Once you file the notice, the citation is put on hold. That means you don't have to abate, i.e., fix, the alleged violation or pay a fine unless and until a judge orders you to.

In the meantime, you have a breathing space to talk to your lawyers and business partners and plot strategy. If you miss the deadline for filing the notice, you must abate the violation by the date listed on the citation and/or pay the fine if and when OSHA demands payment.

Consider Informal Conference First

When you get the citation you don't have to file the notice of contest immediately. You have the right to meet informally with the OSHA area director and seek to work out a settlement (the director's address and phone number will be listed on the citation). Such conferences often lead to settlements without the

need to file the notice and go to a formal hearing.

At the informal conference, you can point out errors in the citation, state your objections, request more time to make corrections or negotiate for a lower penalty. But while the area director has the authority to cut penalties, 20 percent is about the maximum break you can expect. But sometimes the area director will let you pay the proceeds of the penalty directly into your company's health and safety program rather than into the coffers of OSHA. So this is worth asking about.

Two Caveats

There are a couple of things you need to be aware of regarding the conference. First, the time spent preparing for and attending the informal conference counts toward your 15-day deadline for filing a notice of contest. In other words, you don't get an extension on the deadline for conference-related activities. That means you need to ensure that the conference is scheduled to take place within 15 working days of the citation date. This way, if you can't negotiate a settlement during the conference, you can still file the notice.

The second caveat: Once you file a notice of contest, you can't request an informal conference. So don't file the notice unless you resolve not to pursue negotiation first.

Counting the 15-Day Deadline

The 15-day deadline for filing a notice of contest is strictly enforced. If you miss it, don't expect OSHA to cut you any slack.

According to the OSHA *citation regulations,* you begin counting on the first working day after you get the citation from OSHA. Working days include every day but Saturday, Sunday and federal holidays.

How to Prepare the Notice

First of all, the notice of contest must be in writing. Telling an OSHA employee over the phone or in person that you intend to

challenge the citation isn’t good enough.

The regulations don’t prescribe an exact format; nor are there any specific forms you must fill out. It’s okay to write the notice in the form of a letter addressed to the director of your OSHA area office (whose name and address will be listed on the citation). Like the Model Notice in Tools, your notice should:

- Be dated
- List your company name, address and phone number (or that of the attorney filing the notice on your behalf)
- List the citation number (printed on the top right corner of the citation notice) and date

The body of the letter should spell out exactly what you’re contesting. You may contest one or more of the following:

- One or more specific violations
- One or more deadlines for correcting a violation (the abatement dates)
- One or more proposed penalties

You don’t have to list your reasons for contesting the violation, deadline or penalty. You’ll get the chance to do that later at a hearing.

You should also list the date you got the citation, assuming you received it after the date it was issued. This will clarify when the 15-working days deadline for filing the notice of contest begins running. Sign the letter and list your job title. Attach a copy of the citation to the letter. This will ensure that OSHA suspends the violations, abatement deadlines and/or penalties contested until after a hearing takes place.

How to File the Notice

You can file the notice by mail, fax or personal delivery within the 15-working day deadline. It’s a good idea to call the OSHA office after you send the notice and before the deadline expires to confirm that it was received.

The notice only freezes the violations you contest. So if you’re

cited for three violations and contest only two, the third one remains in effect. Moreover, if you contest only the penalty amount not the abatement date, you still must abate the violation by the deadline listed on the citation.

There’s one more rule: You must contest the violation in good faith. Filing a notice just to play for time to avoid fixing a violation or paying a penalty isn’t valid.

What Happens Next

Once the OSHA area director gets the notice of contest, assuming it’s timely, he or she forwards the case to a review commissioner. The case then goes to a hearing before an Administrative Law Judge.

If you disagree with the Judge’s ruling, you can ask for a further review by the Occupational Safety Health and Review Commission (OSHRC). OSHA can do the same if the ruling goes against the agency. OSHRC rulings may be appealed to the U.S. Court of Appeals.

Last but not least, if you’re cited by a state agency for a safety violation, you must follow the state procedures for contesting violations. While most states follow procedures similar to OSHA’s, you need to check with your attorney or state agency regarding its specific requirements.