How to Get an Extension to Correct a Violation

When OSHA inspectors show up at a worksite, they generally don't leave without handing out a citation or two – or more. One of the things found in the typical citation – or, to use the technical term, the Citation and Notification of Penalty letter (CNP)- is a deadline for correcting the violation for which you've been cited. Unfortunately, sometimes the deadline (which is referred to as the "abatement date") is not a realistic one. This can create major problems because the failure to meet the abatement date is grounds for additional penalties.

The good news is that abatement dates aren't set in stone. Under OSHA rules, employers can get extensions to correct problems. But there are certain hoops you need to jump through to secure an extension. This article will explain the requirements and how to comply with them. There's also a Model Form that you can adapt and use to request an extension.

The Extension `Petition'

The starting point: The OSHA Field Inspection Reference Manual says that when inspectors issue citations, they should set an abatement date that gives the employer enough time "within which the employer can reasonably be expected to correct the violation."

The rules governing the abatement of violations and the securing of extensions are set out in the OSHA Petitions for Modification of Abatement Date Standard. According to the standard, employers can get additional time to complete the corrective action only by filing a letter known as a "petition" formally requesting an extension. "Filing a petition that meets OSHA requirements essentially stops the clock and gives you enough time to continue your work on correcting the problem," notes Thomas J. Huser, safety manager of an Indiana hospital.

But getting the petition process right is easier said than done. The procedures and requirements for sending petitions can be tricky and it's easy to get tripped up. Here's a look at what you need to know about the process.

1. **When You Can Petition for an Extension**

There are limitations on when it's permissible to petition for an extension. You can't do it simply because you haven't gotten around to fixing the cited problem. Nor can you just sit back and let the clock tick away and then, as the deadline approaches, realize that you're not going to make it.

The rule: You can't petition for an extension to correct a violation unless you first make a "good faith effort" to meet the abatement date listed in the citation.

2. **Why You Can Petition for an Extension**

Mere inconvenience is not grounds for requesting a petition, warns Chicago lawyer Janine Landow Esser.

The rule: You can't get a petition unless you can show that reasons beyond your control prevented you from correcting the violation by the abatement date.

3. **Where to Send Your Petition**

Make sure you send your petition to the right place.

The Rule: To get an extension, you must send a written request to the Area Director of the U.S. Department of Labor who issued the citation. You must send the petition no later than the close of business on the next working day after the original abatement date listed in the citation. For example, if the abatement date is December 12, 2009, your petition must be filed by Dec. 13, at the latest.

Waiting until the last minute to send your petition is not advisable, cautions Landow Esser. Send the petition as soon in advance of the abatement date as you can. Remember that things beyond your control can go wrong. In addition, you want to leave

time to respond to questions that OSHA might raise regarding your request, just having a competent person at your jobsite isn't enough. Once you find someone with the right qualifications, you need to make sure they do the job OSHA requires "competent persons" to do. That's important because OSHA has a job description for competent persons in your company – complete with a list of responsibilities and obligations they must live up to. And if they don't meet these performance requirements, you run the risk of citations, work orders and fines.

4. **What to Say in Your Petition**

Last but not least, it's essential to include the right information in your petition.

The Rule: The Model Form below illustrates the information that you must list in a petition. Like ours, your petition should:

Identify Your Request: Make sure that you date your petition and include the proper identifying information such as the official OSHA inspection number listed on the CNP and the inspection date [Model Form, intro].

Explain the Abatement Steps You've Taken: Tell OSHA the specific steps you've taken to try to correct the violation by the abatement date. For example, maybe you've ordered a new piece of machinery with appropriate safety devices but the manufacturer hasn't shipped it due to inventory shortages. **Important:** Keep in mind that OSHA standards require you to list dates for <u>each</u> corrective action that you've taken. The Model Form leaves space for you to insert this information [Model Form, par. 1].

Say How Much More Time You Need and Why: Just saying you need more time without saying how much isn't enough. You must request a specific extension date from OSHA. You must also explain why you need the additional time to abate the violation. Of course, the length of the extension must be commensurate with the reason for the delay. Thus, if you expect to receive the machinery you need to correct the problem from the manufacturer in two months and

another month to install it, asking for an extension of more than three months won't cut it. And, as a general matter, Huser says that if you request an "unreasonably long" extension, OSHA won't take your petition seriously [Model Form, par. 2].

Describe the Interim Steps You'll Take Until Abatement Is Complete: Tell OSHA what safety steps you plan to take until the abatement is complete. According to Landow Esser, OSHA won't be satisfied just to hear that you can't make the abatement deadline. The OSHA standard requires you to give the agency assurances that you're protecting workers in the interim by describing "all available steps being taken to safeguard the workers against the cited hazard."

For example, suppose you're waiting for new safety devices to be delivered to correct a cited machine hazard. You might want to assure OSHA that you've removed the hazardous device from service and are providing training to workers on the use of alternative procedures (and explain what those procedures are) until the new devices are in place [Model Form, par. 3].

Certify that You've Posted the Petition: The OSHA standard says that employers petitioning for an extension must post a copy of the petition in a conspicuous place, or near the location where the violation occurred so that all affected workers have notice of it. The petition must also stay posted for 10 working days. In addition, you may also be required to send a copy of the petition to your workers' union representative or other authorized representative. If you do have to send a copy of the petition to a representative of the workers make sure you have that person sign something acknowledging receipt, suggests Landow Esser.

Finally, make sure that your petition certifies to OSHA that you've complied with these posting and sending requirements [Model Form, par. 4].

A Final Caveat

If your state follows its own OSHA-approved plan, for example, CAL-OSHA, check with the state agency that issued the citation to

confirm the abatement deadline and other extension procedures and requirements.

Conclusion: What Happens Next

If OSHA approves your request for an extension, somebody from the agency will let you know no later than 15 working days after the date you posted the petition at your workplace or sent the copy to the workers' representative.

If OSHA denies your request, it will forward your file to the Occupational Safety and Health Review Commission within three working days after expiration of the 15-working-day period. The petition will then be subject to further review.

If you don't hear from OSHA after the 15-working-day period, it's a good idea to check on your request, advises Landow Esser.

[MODEL FORM] Request Extension to Correct OSHA Violations

Here's how to create a request – or petition – more time to correct a violation that OSHA has cited you for. You'll need to adapt this letter to meet the requirements of your specific situation. In particular, you'll need to list specific steps you've taken to abate the violation at the end of paragraph 1. Also make sure you show a copy of this note to your lawyer, particularly if you come from a state like California that is subject to state equivalent requirements. That's because the rules for requesting extensions is likely to differ in those states.

PETITION TO MODIFY ABATEMENT DATE

December 12, 2009

Re: OSHA Inspection #:000000

Inspection Date: November 10, 2009

Dear DOL Area Director:

On November 10, 2009, ABC Manufacturing received an OSHA Citation and Notification of Penalty (CNP) in the course of the above-

referenced inspection. Our CNP listed an abatement date of December 8, 2009.

Pursuant to OSHA regulation 29 CFR §1903.14a, ABC Manufacturing is hereby submitting this Petition for Modification of Abatement Date until [list extension date you want]. We respectfully submit for your consideration the following information in support of our Petition:

1. **STEPS TAKEN TO COMPLY**
   ABC Manufacturing has taken the following steps to achieve compliance within the original abatement date set out in the CNP:

[List each step you've taken to correct the violation and the specific date of each step.]

2. **ADDITIONAL TIME NEEDED TO ABATE**
   In order to enable ABC Manufacturing to complete its abatement efforts, we are requesting an extension until [list extension date you want]. This extension is necessary because: [insert a full explanation of why you need the extension].
3. **INTERIM SAFETY STEPS TAKEN**
   ABC Manufacturing has taken appropriate interim steps to protect its employees against exposure to [list the hazard OSHA cited you for in the CNP] until such time as abatement can be achieved. Those steps include:

   - [List each step your company has taken to date and those it plans to take before final abatement. List specific dates for each entry.].

4. **CERTIFICATION OF POSTING**
   ABC Manufacturing hereby certifies that it has complied with OSHA 29 CFR §1903.14a by posting a copy of the petition in [list where in your workplace you posted the petition and the date of posting], so as to make it readily available to all affected employees. ABC has also served [insert name and title of employees' authorized representative, if any] with a copy of this Petition on [list date].

We appreciate your prompt attention to this matter. Please feel free to contact my office if you have any questions or require additional information.

Very truly yours,

Safety Manager
ABC Manufacturing