
HOUSE BILL 2446

State of Washington

53rd Legislature

1994 Regular Session

By Representatives G. Cole, Springer and Conway; by request of
Department of Labor & Industries

Read first time 01/14/94. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to industrial safety and health appeals; and
2 amending RCW 49.17.140.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 49.17.140 and 1986 c 20 s 1 are each amended to read
5 as follows:

6 (1) If after an inspection or investigation the director or ((his))
7 the director's authorized representative issues a citation under the
8 authority of RCW 49.17.120 or 49.17.130, the department, within a
9 reasonable time after the termination of such inspection or
10 investigation, shall notify the employer by certified mail of the
11 penalty to be assessed under the authority of RCW 49.17.180 and shall
12 state that the employer has fifteen working days within which to notify
13 the director that ((he)) the employer wishes to appeal the citation or
14 assessment of penalty. If, within fifteen working days from the
15 communication of the notice issued by the director the employer fails
16 to notify the director that ((he)) the employer intends to appeal the
17 citation or assessment penalty, and no notice is filed by any employee
18 or representative of employees under subsection (3) of this section
19 within such time, the citation and the assessment shall be deemed a

1 final order of the department and not subject to review by any court or
2 agency.

3 (2) If the director has reason to believe that an employer has
4 failed to correct a violation for which a citation has been issued
5 within the period permitted in the citation for its correction, which
6 period shall not begin to run until the entry of a final order in the
7 case of any appeal proceedings under this section initiated by the
8 employer in good faith and not solely for delay or avoidance of
9 penalties, the director shall notify the employer by certified mail of
10 such failure to correct the violation and of the penalty to be assessed
11 under RCW 49.17.180 by reason of such failure, and shall state that the
12 employer has fifteen working days from the communication of such
13 notification and assessment of penalty to notify the director that
14 ((he)) the employer wishes to appeal the director's notification of the
15 assessment of penalty. If, within fifteen working days from the
16 receipt of notification issued by the director the employer fails to
17 notify the director that ((he)) the employer intends to appeal the
18 notification of assessment of penalty, the notification and assessment
19 of penalty shall be deemed a final order of the department and not
20 subject to review by any court or agency.

21 (3) If any employer notifies the director that ((he)) the employer
22 intends to appeal the citation issued under either RCW 49.17.120 or
23 49.17.130 or notification of the assessment of a penalty issued under
24 subsections (1) or (2) of this section, or if, within fifteen working
25 days from the issuance of a citation under either RCW 49.17.120 or
26 49.17.130 any employee or representative of employees files a notice
27 with the director alleging that the period of time fixed in the
28 citation for the abatement of the violation is unreasonable, the
29 director may reassume jurisdiction over the entire matter, or any
30 portion thereof upon which notice of intention to appeal has been filed
31 with the director pursuant to this subsection. If the director
32 reassumes jurisdiction of all or any portion of the matter upon which
33 notice of appeal has been filed with the director, any redetermination
34 shall be completed and corrective notices of assessment of penalty,
35 citations, or revised periods of abatement completed within a period of
36 ((~~thirty~~)) forty-five working days(~~(, which)~~). The redetermination
37 shall then become final subject to direct appeal to the board of
38 industrial insurance appeals within fifteen working days of such
39 redetermination with service of notice of appeal upon the director. In

1 the event that the director does not reassume jurisdiction as provided
2 in this subsection, ((he)) the director shall promptly notify the state
3 board of industrial insurance appeals of all notifications of intention
4 to appeal any such citations, any such notices of assessment of penalty
5 and any employee or representative of employees notice of intention to
6 appeal the period of time fixed for abatement of a violation and in
7 addition certify a full copy of the record in such appeal matters to
8 the board. The director shall adopt rules of procedure for the
9 reassumption of jurisdiction under this subsection affording employers,
10 employees, and employee representatives notice of the reassumption of
11 jurisdiction by the director, and an opportunity to object or support
12 the reassumption of jurisdiction, either in writing or orally at an
13 informal conference to be held prior to the expiration of the ((~~thirty-~~
14 ~~day~~)) forty-five-day period. A notice of appeal filed under this
15 section shall stay the effectiveness of any citation or notice of the
16 assessment of a penalty pending review by the board of industrial
17 insurance appeals, but such appeal shall not stay the effectiveness of
18 any order of immediate restraint issued by the director under the
19 authority of RCW 49.17.130. The board of industrial insurance appeals
20 shall afford an opportunity for a hearing in the case of each such
21 appellant and the department shall be represented in such hearing by
22 the attorney general and the board shall in addition provide affected
23 employees or authorized representatives of affected employees an
24 opportunity to participate as parties to hearings under this
25 subsection. The board shall thereafter make disposition of the issues
26 in accordance with procedures relative to contested cases appealed to
27 the state board of industrial insurance appeals.

28 Upon application by an employer showing that a good faith effort to
29 comply with the abatement requirements of a citation has been made and
30 that the abatement has not been completed because of factors beyond
31 ((his)) the employer's control, the director after affording an
32 opportunity for a hearing shall issue an order affirming or modifying
33 the abatement requirements in such citation.

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