
SENATE BILL 5460

State of Washington

65th Legislature

2017 Regular Session

By Senators Keiser and King; by request of Department of Labor & Industries

Read first time 01/25/17. Referred to Committee on Commerce, Labor & Sports.

1 AN ACT Relating to extending the redetermination timeline
2 regarding appeals to the department of labor and industries;
3 reenacting and amending RCW 49.17.140; and providing an effective
4 date.

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

6 **Sec. 1.** RCW 49.17.140 and 2011 c 301 s 13 and 2011 c 91 s 1 are
7 each reenacted and amended to read as follows:

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

1 section within such time, the citation and the assessment shall be
2 deemed a final order of the department and not subject to review by
3 any court or agency.

4 (2) If the director has reason to believe that an employer has
5 failed to correct a violation for which the employer was previously
6 cited and which has become a final order, the director shall notify
7 the employer using a method by which the mailing can be tracked or
8 the delivery can be confirmed of such failure to correct the
9 violation and of the penalty to be assessed under RCW 49.17.180 by
10 reason of such failure, and shall state that the employer has fifteen
11 working days from the communication of such notification and
12 assessment of penalty to notify the director that the employer wishes
13 to appeal the director's notification of the assessment of penalty.
14 If, within fifteen working days from the receipt of notification
15 issued by the director the employer fails to notify the director that
16 the employer intends to appeal the notification of assessment of
17 penalty, the notification and assessment of penalty shall be deemed a
18 final order of the department and not subject to review by any court
19 or agency.

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

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

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

36 (4) An appeal of any violation classified and cited as serious,
37 willful, repeated serious violation, or failure to abate a serious
38 violation does not stay abatement dates and requirements except as
39 follows:

1 (a) An employer may request a stay of abatement for any serious,
2 willful, repeated serious violation, or failure to abate a serious
3 violation in a notice of appeal under subsection (3) of this section;

4 (b) When the director reassumes jurisdiction of an appeal under
5 subsection (3) of this section, it will include the stay of abatement
6 request. The issued redetermination decision will include a decision
7 on the stay of abatement request. The department shall stay the
8 abatement for any serious, willful, repeated serious violation, or
9 failure to abate a serious violation where the department cannot
10 determine that the preliminary evidence shows a substantial
11 probability of death or serious physical harm to workers. The
12 decision on stay of abatement will be final unless the employer
13 renews the request for a stay of abatement in any direct appeal of
14 the redetermination to the board of industrial insurance appeals
15 under subsection (3) of this section;

16 (c) The board of industrial insurance appeals shall adopt rules
17 necessary for conducting an expedited review on any stay of abatement
18 requests identified in the employer's notice of appeal, and shall
19 issue a final decision within forty-five working days of the board's
20 notice of filing of appeal. This rule making shall be initiated in
21 2011;

22 (d) Affected employees or their representatives must be afforded
23 an opportunity to participate as parties in an expedited review for
24 stay of abatement;

25 (e) The board shall grant a stay of an abatement for a serious,
26 willful, repeated serious violation, or failure to abate a serious
27 violation where there is good cause for a stay unless based on the
28 preliminary evidence it is more likely than not that a stay would
29 result in death or serious physical harm to a worker;

30 (f) As long as a motion to stay abatement is pending all
31 abatement requirements will be stayed.

32 (5) When the board of industrial insurance appeals denies a stay
33 of abatement and abatement is required while the appeal is
34 adjudicated, the abatement process must be the same process as the
35 process required for abatement upon a final order.

36 (6) The department shall develop rules necessary to implement
37 subsections (4) and (5) of this section. In an application for a stay
38 of abatement, the department will not grant a stay when it can
39 determine that the preliminary evidence shows a substantial
40 probability of death or serious physical harm to workers. The board

1 will not grant a stay where based on the preliminary evidence it is
2 more likely than not that a stay would result in death or serious
3 physical harm to a worker. This rule making shall be initiated in
4 2011.

5 NEW SECTION. **Sec. 2.** This act takes effect January 1, 2018.

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