

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-170 Appeals.

Summary:

Employer responsibility:

To post information regarding appeals in a conspicuous area where notices to employees are normally posted:

Appealing a citation and notice (C&N)

WAC 296-900-17005.

Stay of abatement date request

WAC 296-900-17006.

Appealing a corrective notice of redetermination (CNR)

WAC 296-900-17010.

Posting appeals

WAC 296-900-17015.

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-17005 Appealing a citation and notice (C&N).

IMPORTANT:

- Employers may appeal C&Ns.
- Employees of the cited employer, or their designated representatives, may only appeal ((~~correction~~)) abatement dates.
- The filing of an appeal does not stay the abatement date for violations classified as serious, willful, repeat serious, or failure to abate serious. Employers may request a stay of abatement date for these classifications of violations when they appeal a C&N.

You must:

- When appealing, submit a written appeal to ((WISHA)) DOSH within fifteen working days after receiving the C&N. Include the following information:
 - Business name, address, and telephone number.
 - Name, address, and telephone number of any employer representative.
 - C&N number.
 - What you believe is wrong with the C&N and any related facts.
 - What you believe should be changed, and why.
 - Requests for stay of abatement date according to WAC 296-900-17006.

- A signature and date.
- Send appeals in any of the following ways:
 - Mail to:

Assistant Director for ((WISHA)) DOSH Services
 Attn: ((WISHA)) DOSH Appeals
 P.O. Box 44604
 Olympia, WA 98504-4604
 - Fax to: 360-902-5581
 - Take to any department service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.
Note: The postmark is considered the submission date of a mailed request.

Employees or their designated representatives must:

- When appealing C&N ((~~correction~~)) abatement dates, submit a written request to ((WISHA)) DOSH within fifteen working days after the C&N is received. Include the following information:
 - Name of employee, address, telephone number.
 - Name, address, and telephone number of any designated representative.
 - C&N number.
 - What is believed to be wrong with the ((~~correction~~)) abatement date.

- A signature and date.
- Send appeals in any of the following ways:
 - Mail to:

Assistant Director for ((WISHA)) DOSH Services
 Attn: ((WISHA)) DOSH Appeals
 P.O. Box 44604
 Olympia, WA 98504-4604
 - Fax to: 360-902-5581
 - Take to any L&I service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.
Note: The postmark is considered the submission date of a mailed request.

What to expect from ((WISHA)) DOSH:

- After receiving an appeal, ((WISHA)) DOSH will do one of the following:
 - Reassume jurisdiction over the C&N, and notify the person who submitted the appeal.
 - Forward the appeal to the board of industrial insurance appeals. The board will send the person submitting the appeal a notice with the time and location of any board proceedings.

Definition:

Reassume jurisdiction means that ((WISHA)) DOSH has decided to provide the employer with an informal conference to discuss their appeal.

- When reassuming jurisdiction over a C&N, ((WISHA)) DOSH has thirty working days after receiving the appeal to review it, gather more information, and decide whether to make changes to the C&N. The review period:
 - Begins the first working day after the appeal is received. For example, if an appeal is received on Friday, the thirty days will begin on the following Monday unless ((~~it is~~)) it's a state

holiday.

- May be extended fifteen additional working days, if everyone involved agrees and signs an extension agreement within the initial thirty-day period.

- Will include an informal conference about the appeal that is an opportunity for interested parties to:

- Briefly explain their positions.
- Provide any additional information they would like ((WISHA)) DOSH to consider when reviewing the C&N.
- Provide any additional information they would like DOSH to consider when reviewing stay of abatement date requests.

Note: ((WISHA)) DOSH might reassume jurisdiction over a C&N to do any of the following:

- Provide an employer and affected employees an opportunity to present relevant information, facts, and opinions during an informal conference.
- Give an employer, affected employees, and the department an opportunity to resolve appeals rapidly and without further contest, especially in routine compliance cases.
- Educate employers about the C&N, the ((WISHA)) DOSH appeals process, and ((WISHA)) DOSH compliance.
- Review citations, penalties, and ((correction)) abatement dates. Although informal, the conference is an official meeting and it may be either partially or totally recorded. Participants will be told if the conference is recorded.
- Review requests to stay abatement dates.

● On or before the end of the thirty working day review period, ((WISHA)) or forty-five working days if everyone involved agrees to the fifteen additional working day extension, DOSH will issue a corrective notice of redetermination that:

- Reflects any changes made to the C&N.
- Grants or denies requests to stay abatement dates and includes the basis of the decision.
- Is sent to the employer, employees, and employee representatives participating in the appeal process.

NEW SECTION

WAC 296-900-17006 Stay of abatement date request. (1) Employers may request stay of abatement dates for any violation classified as serious, willful, repeat serious, or failure to abate serious. Stay requests must be made in the notice of appeal under WAC 296-900-17005.

(2) Stay requests must include:

(a) Each violation and item number for which a stay is requested.

(b) The reason for the stay request.

(3) DOSH will review requests for stay of abatement dates for each violation requested. DOSH will stay the abatement date when an appeal is filed for any serious, willful, repeat serious, or failure to abate serious violation where DOSH cannot determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. DOSH will make its determination based on what a reasonable person would conclude based on the same circumstances.

(4) The basis for decisions on stay requests will be in the

CNR.

(5) If a stay of abatement date is granted in the CNR and the employer appeals the CNR, the stay will remain in place until there is a final order on the appeal.

(6) If a stay of abatement date is denied in the CNR and the employer appeals the CNR further, the request for a stay of violation date must be renewed according to WAC 296-900-17010.

(7) There is no requirement to abate a violation for which a stay request is pending.

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-17010 Appealing a corrective notice of redetermination (CNR).

IMPORTANT:

- Employers may appeal CNRs.
- Employees who could be affected by a CNR, or their designated representatives, may appeal (~~(correction)~~) abatement dates.

● Employers must renew requests to stay abatement dates if a stay request was denied when they appeal CNRs.

Employees or their representatives must:

- Appeal a CNR, if desired, in writing within fifteen working days after it was received to the:

Board of Industrial Insurance Appeals

2430 Chandler Court S.W.

P.O. Box 42401

Olympia, WA 98504-2401

- Send a copy of the appeal to the CNR to the:

Assistant Director for ((WISHA)) DOSH Services

Attn: ((WISHA)) DOSH Appeals

P.O. Box 44604

Olympia, WA 98504-4604

- Fax to: 360-902-5581

- Take to any department service location.

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-17015 Posting appeals.

You must:

- Immediately post notices and information related to any appeal or stay of abatement date request in the same place where

((WISHA)) DOSH citation and notices (C&Ns) are posted. These notices and information include:

- The notice of appeal, until the appeal is resolved.
- Notices about ((WISHA)) DOSH reassuming jurisdiction, and any extension of the review period until the end of review period.
- A notice of an informal conference until after the conference is held.
- A corrective notice of redetermination for as long as C&Ns are to be posted.

Reference: For C&N posting requirements, see Posting citation and notices, WAC 296-900-13015.