

## Background

Up until July 1, 2012, if a business is cited by the Department of Labor & Industries (L&I) for a violation of a workplace safety and health rule and the business appeals, there is no legal requirement to correct the hazard until the appeal is resolved – a process that could take months or years.

However, in 2011, the Washington State Legislature passed a bill directing L&I to enact a rule requiring employers to correct safety and health hazards associated with *serious* violations even if they are appealed. This “Stay of Abatement Date” rule was adopted Jan. 3, 2012, and takes effect July 1, 2012.

**Beginning July 1, 2012**, when an L&I workplace safety or health inspector finds a hazard at a worksite that results in L&I citing an employer for a safety or health violation, the employer will be required to correct or abate the hazard for which they were cited by the designated abatement date, regardless of whether they appeal the violation or not. A “stay” of this requirement may be granted by L&I or the Board of Industrial Insurance Appeals (BIIA) if an employer requests a stay at the same time they appeal a violation.

**Q:** ***What is a “stay” of abatement date?***

**A:** A stay of this abatement date means the employer’s requirement to abate or correct the hazard is put on hold or suspended until the appeal is resolved.

**Q:** ***What types of violations are covered?***

**A:** A stay of abatement date can be requested when an appeal is filed for violations classified as: serious, repeat serious, failure to abate serious, and willful. For appeals of general or repeat-general violations, a stay of abatement date is automatic, and you do not need to make a special request.

**Q:** ***What businesses must comply with this new rule?***

**A:** All businesses are covered by the new rule.

**Q:** ***What if I want more time to abate the hazard but I don’t want to appeal the violation?***

**A:** If your only concern is the abatement date, you may request more time by asking for an extension of abatement. Information on abatement extensions is in the Citation and Notice packet.

**Q:** ***Does a stay of abatement date request have any effect on how an appeal is processed or handled?***

**A:** No.

**Q:** ***How do I file a request for a Stay of Abatement Date?***

**A:** If you wish to request a stay of abatement date, you must file your request at the same time you file an appeal of the violation(s) on the Citation and Notice. The appeal, including any request for stay of abatement date, must be in writing and sent to L&I’s Division of Occupational Safety and Health (DOSH) Appeals Program. Further appeal rights and requirements can be found in the Citation and Notice packet. You can appeal more than one violation cited in a Citation and Notice.

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**Q: *How long will it take to get a response?***

**A:** The decision regarding the stay of abatement date is decided during the appeal process. If the appeal is reviewed by L&I, you will receive a notice from an L&I hearings officer scheduling an informal conference. After the conference, the decision (called a Corrective Notice of Redetermination or CNR), must be issued within 30 working days from L&I's receipt of the appeal unless the parties agree to a 15-day extension, which would allow 45 working days for it to be issued. The CNR will also contain the stay of abatement date decision.

If your appeal is going directly to the BIIA, the notice you receive will come from the BIIA.

**Q: *What criteria will L&I use when deciding a stay of abatement date request?***

**A:** L&I will stay the abatement date where it cannot determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The term "preliminary evidence" includes all information from the inspection and all information provided by employer or employees during the L&I level of appeal.

**Q: *What happens to the abatement dates while a stay request is pending?***

**A:** There is no requirement to abate/correct a violation while a stay request is pending.

**Q: *What happens if L&I denies a request for a stay of abatement date?***

**A:** If a request for a stay of abatement date is denied, you must abate/correct the hazard/violation by the date given on the CNR. If you further appeal the violation for which the stay was denied, you must renew the stay of abatement date request in your written notice of appeal to the BIIA, if you want the BIIA to consider the stay request.

**Q: *What happens if L&I grants a request for stay of abatement date but I want to appeal other portions of the CNR further?***

**A:** If L&I grants a stay request and you choose to further appeal other portions of the CNR, you must file a written appeal with the BIIA within 15 working days from receipt of the CNR. The CNR packet will contain appeal rights and requirements. You do not need to renew the stay of abatement date request in the notice of appeal to the BIIA for the violations where a stay was already granted at the L&I level of appeal.

**Q: *What happens if abatement is required during the appeal and the hazard is not corrected by the final abatement date?***

**A:** If a violation/hazard is not corrected by the final abatement date, L&I will take action which may include conducting follow-up inspections and issuing additional penalties for failure to abate.

**Q: *Who should I call if I have more questions about this process?***

**A:** Please call the DOSH Appeals Program at 360-902-5486.

**Q: *What can a worker who disagrees with an employer's stay of abatement date request do?***

**A:** Workers have a right to participate in stay of abatement date request reviews at both the L&I level and the BIIA level of appeal. Employers must immediately post Citations and Notices as well as any related information to the appeal, informal conference, or stay requests. An employee concerned about a stay of abatement date at the L&I level can contact the DOSH Hearings Officer deciding the matter. Contact information will be included in the informal conference scheduling notice.

For appeals at the BIIA level, employees may contact the appeals judge listed on the notice to discuss their concerns.