

# CITATIONS AND CORRECTION

## 437-001-0205 Citation and Notice of Penalty.

(1) If the Division concludes from the review of an inspection report that a rule or order was violated, a citation will be issued to the employer which shall:

- (a) State the name of the employer, place of employment, and date of inspection. If the violation occurred on other than the inspection date, the date of the violation will be included;
- (b) Describe factually the nature and location of the violation;
- (c) State the type of violation, if other than general;
- (d) Identify the rule or order violated;
- (e) Fix a time for the correction of each violation not corrected at the time of inspection;
- (f) State the penalty for each violation;
- (g) Identify which, if any, penalties are suspended;
- (h) State the total dollar amount of assessed penalties;
- (i) Inform the employer of the right to appeal the citation, the civil penalty or the period of time fixed for correction of the violation to the Board;
- (j) Inform affected employees of their right to appeal the time fixed for correction of the violation; and
- (k) Notify the employer that the citation becomes a final order if an appeal is not filed within 30 days of receipt of the citation by the employer.

(2) The citation shall be served on the employer by certified mail or in person.

(3) Each employee representative shall be sent a copy of all citations and notices of penalties issued.

**Stat. Auth.:** ORS 654.025(2) and 656.726(4).

**Stat. Implemented:** ORS 654.001 through 654.295.

**Hist:** WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 10-2007, f. 12-3-07, ef. 1-1-08.

## 437-001-0215 Employer Response to Citation and Notice of Penalty.

(1) After receipt of a citation, the employer shall:

(a) Promptly post the citation for employees information for 3 days or until the violation is corrected, whichever occurs last;

(b) Assure that any amendments or withdrawals to a citation are posted with the original citation for 3 days or until the violation is corrected, whichever occurs last;

(c) Correct each violation by the date ordered; and

(d) If no appeal is filed, remit any penalty by the 31st calendar day following receipt of the citation.

(2) The above requirements shall not limit an employer's appeal rights.

**Stat. Auth.:** ORS 654.025(2) and 656.726(4).

**Stat. Implemented:** ORS 654.001 through 654.295.

**Hist:** WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 10-2007, f. 12-3-07, ef. 1-1-08.

## 437-001-0220 Payment of Penalties.

(1) All civil penalties become due and owing after the citation becomes a final order.

(2) If payment is not received within 20 days after the order becomes final, it may be docketed as a judgment as provided by ORS 654.086(3).

**Stat. Auth.:** ORS 654.025(2) and 656.726(4).

**Stat. Implemented:** ORS 654.001 through 654.295.

**Hist:** WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 10-2007, f. 12-3-07, ef. 1-1-08.

## 437-001-0225 Penalty for Falsification.

(1) An employer who knowingly makes any false statement, representation or certification regarding the correction of a violation shall be assessed a civil penalty of not less than \$100 and not more than \$2,500.

(2) An employer who knowingly makes any false statement, representation or certification regarding the correction of a violation, and that violation is found to have caused or materially contributed to the death of any employee, shall be penalized according to the provisions of ORS 654.991(3). In such cases, the Administrator shall contact the appropriate local district attorney for assistance and possible prosecution.

**Stat. Auth.:** ORS 654.025(2) and 656.726(3).

**Hist:** WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975, f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

## **437-001-0230 Correction of Violation.**

(1) The employer shall correct any violation the employer has been ordered to correct except when:

- (a) A general violation has been appealed;
- (b) A stay of the correction date has been ordered by the Hearings Division on an appealed serious violation;
- (c) An extension has been granted in accordance with OAR 437-001-0240.

(2) If the violation is corrected at the time of inspection, the correction shall be noted in the Compliance Officer's inspection report and used as the basis of possible penalty reduction. However, such correction shall not provide immunity from the issuance of a citation for the violation.

**Stat. Auth.:** ORS 654.025(2) and 656.726(3).  
**Hist:** WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.  
WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.  
WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.  
APD Admin. Order 6-1987, f. 12-23-87, ef. 1-1-88.  
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

## **437-001-0231 Abatement Verification.**

(1) When an employer receives a citation for a violation of the Oregon Safe Employment Act, the employer must notify the appropriate OR-OSHA field office of the corrective action taken to comply with each cited violation by Letter of Corrective Action. Such notification must occur within 10 calendar days after the last abatement date on the citation.

(2) When the compliance officer notes that violations are complied with at the time of the inspection, abatement verification for those violations is not required.

(3) The employer's verification that abatement is complete must include, for each cited violation, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

**Stat. Auth.:** ORS 654.025(2) and 656.726(3).  
**Stats. Implemented:** ORS 654.001 through 654.295.  
**Hist:** OR-OSHA Admin. Order 7-1999, f. 7/15/99, ef. 7/15/99.

**437-001-0235 Failure to Correct Violation.** If a subsequent inspection reveals that a violation was not corrected, or was only partially corrected, by its correction date, a notice shall be issued to the employer which:

- (1) Gives the date and number of the citation which first alleged the violation;
- (2) Identifies the uncorrected violation and the date by which it was ordered to be corrected;

- (3) Advises the employer of the nonabatement days accumulated to the date of notice;
- (4) Advises the employer that daily penalties shall continue to accumulate until the violation is corrected; and
- (5) Notifies the employer to advise the indicated field office immediately upon correction of the violation.

**Stat. Auth.:** ORS 654.025(2) and 656.726(3).  
**Stats. Implemented:** ORS 654.001 through 654.295.  
**Hist:** WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.  
WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.  
WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.  
APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.  
OR-OSHA Admin. Order 7-1999, f. 7/15/99, ef. 7/15/99.

## 437-001-0240 Extension of Correction Date – Application.

- (1) An employer may apply for an extension of the date for correcting a violation.
- (2) An application for extension of correction date shall be in writing to the OR-OSHA Division, 350 Winter St. NE, Salem, Oregon 97310, or received by any office of the Department.
- (3) The application for extension must include:
  - (a) The name and address of the employer;
  - (b) The location of the place of employment;
  - (c) The citation number;
  - (d) The item number of the violation for which the extension is sought;
  - (e) The reason for the request;
  - (f) Any interim steps being taken to safeguard employees against the cited hazard during the requested extended correction period;
  - (g) The date by which the employer proposes to complete the correction; and
  - (h) A statement that a copy of the request for extension has been posted as required by OAR 437-001-0275(2) or for at least 10 days, whichever is longer, and, if appropriate, served on the authorized representative of affected employees, and certification of the date upon which such posting or service was made.

(i) Any employee who feels a posted request for an extension is unjust may contact the Administrator for a review of the matter.

(4) The application shall be postmarked or received by the Department no later than the correction date of the violation for which the extension is requested. For good cause, the Administrator may approve exceptions to this rule.

**Stat. Auth.:** ORS 654.025(2) and 656.726(4).

**Stats. Implemented:** ORS 654.001 through 654.295.

**Hist:** WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 10-2007, f. 12-3-07, ef. 1-1-08.

## 437-001-0245 Extension of Correction Date – Decision.

(1) A request for extension of the correction date shall be granted or denied on the basis of information in the application, information from employees and any other relevant information.

(2) If the request for extension is granted, a notice of extension of correction date shall be sent to the employer. The notice shall:

(a) Include notice of the right of affected employees or their representative to appeal the extension; and

(b) Be posted for employees information until the violation is corrected.

(3) If the request for extension is denied, the Administrator shall, with reasonable promptness, inform the employer in writing of the reasons for such denial, and of the employees and employer's rights to appeal the Administrator's decision.

**Stat. Auth.:** ORS 654.025(2) and 656.726(3).

**Hist:** WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

**437-001-0250 Extension of Correction Date – Revocation.** The Administrator may, for good cause, revoke an extension of correction date.

**Stat. Auth.:** ORS 654.025(2) and 656.726(3).

**Hist:** WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

**437-001-0251 Extension of Correction Date – Hearing on the Application.** Affected employees or the employee representative shall be given the opportunity to request a hearing on an application for an extension of the correction date.

- (1) Requests for hearings shall be made in the following manner;
  - (a) The request shall be made within 10 days of posting the application;
  - (b) A request shall be made to the Administrator and shall contain:
    - (A) A concise statement of facts showing how the employee(s) would be affected by the extension of correction date;
    - (B) A statement opposing the extension of the correction date and a concise summary of the evidence supporting the opposition; and
    - (C) Any views or arguments on any issue of fact or law presented.
- (2) Notice of hearing shall be given by the Administrator to affected persons and shall contain:
  - (a) Time, place and nature of hearing;
  - (b) Legal authority under which the hearing will be held; and
  - (c) The issues to be discussed.
- (3) The hearing shall be conducted by the Administrator in a manner which will allow all affected persons to submit information on the application.
- (4) At any hearing conducted to determine the merits of an extension request, the person requesting the extension of compliance time shall have the burden of proof regarding the request.
- (5) The Administrator shall evaluate all information submitted at the hearing and make a determination on the merits of the application.

**Stat. Auth.:** ORS 654.025(2) and 656.726(3).

**Hist:** WCD Admin. Order, Safety 6-1982, f. 6-28-82, ef. 8-1-82.

WCD Admin. Order, Safety 3-1983, f. 1-31-83, ef. 2-1-83.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

## **437-001-0265 Amendment, Reissue or Withdrawal of Citation.**

- (1) When the Division identifies an error or errors in the citation, the Administrator may, for good cause, amend, reissue or withdraw a citation provided:
  - (a) Such action will not reduce the occupational safety and health protection of affected employees;

# CITATIONS AND CORRECTION

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**(b)** No appeal has been filed with the Board to contest the citation;

**(c)** The time for filing an appeal has not expired; and

**(d)** The employee representative, if any, has been notified of the proposed amendment.

**(2)** The employer receiving an amendment or withdrawal shall post the document as required by OAR 437-001-0275(2).

**(3)** An amendment or withdrawal of an appealed citation or order shall be made in accordance with the Board's rules (OAR 438) for contested cases. The administrator shall notify the employee representative of any proposed settlement or withdrawal made according to OAR 438.

**(4)** Any withdrawal, or amendment of an appealed citation that reduces the penalty or extends the correction times of an alleged serious or willful violation shall not be made without written approval of the Director.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.001 through 654.295.

Hist: WCB Admin. Order 19-1974, f. 6-5-74, ef. 7-1-74.

WCB Admin. Order, Safety 8-1975 f. 8-5-75, ef. 9-1-75.

WCD Admin. Order, Safety 5-1978, f. 6-22-78, ef. 8-15-78.

WCD Admin. Order, Safety 4-1981, f. 5-22-81, ef. 7-1-81.

APD Admin. Order 7-1988, f. 6-17-88, ef. 7-1-74.

OR-OSHA Admin. Order 6-2003, f. 11/26/03, ef. 11/26/03.

