

# Abatement Process After an OSHA Inspection

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What happens after you receive a citation from an inspection you just underwent with the Occupational Health and Safety Administration (OSHA)? If you are issued a citation after an inspection, there will be a time frame in which you have to correct the cited violations. This is called the abatement process. This document provides you with information to help navigate the abatement process. It is very important to follow all abatement procedures because failing to do so could result in increased violation categories and daily penalties. These abatement penalties will cost your organization a substantial amount of money, time and resources.

Abatement only applies to an employer that has received a citation from OSHA arising from an inspection. This checklist applies to the abatement process for states following federal OSHA standards. For states that have their own OSHA-approved state plan, check your state OSHA plan for specific information on the abatement process.

## When You Receive a Citation

- The citation will explain your options:
  - You may pay the fine and fix the hazards.
  - If you would like an informal hearing with the OSHA area director, you should request to schedule one within 15 business days of receiving the citation.
  - If you want to contest the violations, abatement date or penalty amount, then you must file a Notice to Contest to receive a formal hearing.
- If you pay the fine, take notice of the abatement date listed on the citation. If there are circumstances in which the hazards cannot be mitigated by the abatement date, then you must file a Petition of Modification of Abatement (PMA).

### What's Included in a Citation?

- What violations were found;
- The type of violations;
- The location of the violation;
- When the violations must be fixed by; and
- The proposed penalty.

## Petition of Modification of Abatement

- You may only file a PMA if you have made a good faith effort to resolve the hazard, but circumstances beyond your control prevented it. The written petition should include:
  - What you have done and the dates of completion;

## Abatement Process After an OSHA Inspection

- What more needs to be completed and the time frame required to complete the abatement;
  - The reason more time is needed;
  - What is being done to mitigate hazards in that area in the meantime; and
  - Certification of posting the petition at the hazardous location so affected employees are on notice.
- You must send the PMA to the area director who issued the citation by the end of the next business day following the abatement date.
  - You must post the PMA for 10 business days to give employees notice and allow them to file an objection concerning the PMA with the area director. If employees do not file an objection within 10 business days, they waive their right to do so.
  - If the OSHA Area director denies the petition, it then goes to the US Occupational Safety and Health Review Commission (OSHRC) within three days as a contested case.

## Abatement Verification for Employers

- Make sure the citation and abatement documentation are posted at or near the violation site. The abatement verification includes abatement certifications, abatement plans and progress reports.
- Certification is required for each individual violation abatement. Information should include the date, method of correction and a statement that employees have been notified of the abatement.
- Send the OSHA area director a written notification that each violation has been corrected within 10 calendar days after the stated abatement date.
- Violations other than serious violations do not require an abatement plan—only a signed abatement certification showing the hazard has been corrected.
- Violations classified as “serious,” “willful,” “repeated” or “failure to abate” **do not** require an abatement plan if the abatement periods of less than 90 days.
- Violations classified as “serious,” “willful,” “repeated” or “failure to abate” require an abatement plan if the abatement periods of more than 90 days.
- Violations classified as “serious,” “willful,” “repeated” or “failure to abate” require more evidence of completion. Examples of abatement certification include:
  - Purchase receipts of new equipment
  - Repair receipts or work orders
  - Photographs

## Abatement Process After an OSHA Inspection

- Videos
  - Reports completed by safety and health professionals that describe the actions taken and, if required, include analytical testing that shows abatement
  - Evaluations by safety engineers
  - Records of trainings that have been completed
  - Program documents, if a program was missing
- OSHA will discuss with you the acceptable documents at the time of inspection closing conference, during the conference or when the citations are issued. If you send in documents that are considered unacceptable, OSHA will inform you of that.
  - Make note that employees or employee representatives can contest the abatement process, but it **does not** change your obligation as an employer to abate.
  - If an OSHA inspector identified a violation during a walk-through, notices it has been corrected and notes information about that correction in the citation, then you do not have to certify the abatement.

## When the Citation Includes Movable Equipment

There are two different types of movable equipment, and the way warning tags must be placed depends on the type of equipment.

- For hand-held equipment, the tag or notice of citation must be attached immediately after receiving it, unless the violation has already been abated. The best practice would be to properly lockout or tagout the equipment and place it out of order prior to receiving the citation.
- For non-hand-held equipment, a warning tag or copy of the citation must be attached prior to moving the equipment at all. Again, lockout or tagout should have been utilized.
- The tag or citation must not be altered and should stay attached until the issue is corrected, the proper documentation has been submitted to OSHA and there is a final order dismissing the citation.
- If the equipment is permanently removed from service, the citation may be removed.

### Summary of Abatement Process

- Notify employees of hazard.
- Correct the hazard.
- Provide certification the hazard has been corrected.
- Notify affected employees of corrections.
- Provide proper documentation to OSHA.
- Make sure all equipment has been properly tagged or permanently removed.

## Progress Reports for Abatement Plans

- The citation will state whether you need to provide a progress report.

## Abatement Process After an OSHA Inspection

- If you correct the hazard prior to the report being due, then there is no need for a progress report, but you will still need to submit an abatement certification showing the hazard has been completed.
- Complete the abatement plan by identifying the following:
  - The violation and steps taken to correct it;
  - Schedule for completion; and
  - What has been done to mitigate employee exposure to the hazardous equipment or area until final controls are in place.
- You must submit your plan for each cited violation within 25 calendar days of the final order.

## Providing Notice to Employees of Abatement Process

- OSHA will request whether it wants progress reports for any of the violations. The citation will state the due date, which hazards need one, the date for correction and actions taken to correct them.
  - Progress reports are usually not due until 30 days after the abatement plan is submitted.
- The best practice is to describe the corrective action in one sentence with the date it occurred.
- Affected employees must be notified of the abatement activities by keeping the correspondence with OSHA posted near the violation site.
- If the notice is not effective for all affected employees, place it in a location where all affected employees can view it. Employers must also use other means of communication to make employees aware of the activities, such as:
  - Placing a notice with their paychecks
  - Placing a notice in an area where the tools are normally stored
  - Placing a notice in the vehicle where the equipment is located
  - Through training, toolbox chats or newsletters
- Employees have the right to view all documents before or at the same time they are submitted to OSHA. They must file a request to view within three business days of submission, and the employer must respond within five days of that request.
- Remember that the date of the postmark on the mailed documents is the date of submissions, but by any other means, the submission date is the date OSHA receives the document.

## Failure to Abate

- Failing to make the necessary corrections by the required date or provide the necessary documentation could result in penalties of up to \$13,494 daily.