

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1047

Short Title: OSHA Appeal Changes.

(Public)

Sponsors: Representative Bowen.

Referred to: Business and Labor.

April 19, 1993

A BILL TO BE ENTITLED

AN ACT TO REVISE CERTAIN PROCEDURES FOR APPEAL UNDER THE
OCCUPATIONAL SAFETY AND HEALTH ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-135(j) is repealed.

Sec. 2. G.S. 95-137(b) reads as rewritten:

"(b) Procedure for Enforcement. –

(1) If, after an inspection or investigation, the Director issues a citation under any provisions of this Article, ~~he~~ the Director shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of any penalty, if any, ~~he~~ the Director has recommended to the Commissioner to be proposed under the provisions of this Article and that the employer has 15 working days within which to notify the Director that the employer wishes to request an informal conference; if, after the conclusion of the informal conference, the employer wishes to contest the citation or proposed assessment of penalty, the employer has 15 working days from the date of the informal conference to notify the Director. If, within 15 working days from the receipt of the notice issued by the Director, the employer fails to notify the Director that the employer requires an informal conference to be held or intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under the provisions of this Article within such time, the citation and the assessment as

- 1 proposed to the Commissioner shall be deemed final and not subject to
2 review by any court.
- 3 (2) If the Director has reason to believe that an employer has failed to
4 correct a violation for which a citation has been issued within the
5 period permitted for its correction (which period shall not begin to run
6 until the entry of a final order by the Board in case of any review
7 proceedings under this Article initiated by the employer in good faith
8 and not solely for a delay or avoidance of penalties), the Director shall
9 notify the employer by certified mail of such failure and of the penalty
10 proposed to be assessed under this Article by reason of such failure
11 and that the employer has 15 working days within which to notify the
12 Director that ~~he~~the employer wishes to contest the Director's
13 notification of the proposed assessment of penalty. If, within 15
14 working days from the receipt of notification issued by the Director, an
15 employer fails to notify the Director that ~~he~~the employer intends to
16 contest the notification or proposed recommendation of penalty, the
17 notification and the proposed assessment made by the Director shall be
18 final and not subject to review by any court.
- 19 (3) No citation may be issued under this section after the expiration of six
20 months following the occurrence of any violation.
- 21 (4) If an employer notifies the Director that ~~he~~the employer intends to
22 contest a citation issued under the provisions of this Article or
23 notification issued under the provisions of this Article, or if, within 15
24 working days of the receipt of a citation under this Article, any
25 employee or ~~his~~representative thereof files a notice with the Director
26 alleging that the period of time fixed in the citation for the abatement
27 of the violation is unreasonable, the Director shall immediately advise
28 the Board of such notification, and the Board shall afford an
29 opportunity for a hearing. The Board shall thereafter issue an order,
30 based on findings of fact, affirming, modifying, or vacating the
31 Director's citation or the proposed penalty fixed by the Commissioner,
32 or directing other appropriate relief, and such order shall become final
33 30 days after its issuance. Upon showing by an employer of a good
34 faith effort to comply with the abatement requirements of a citation,
35 and that an abatement has not been completed because of factors
36 beyond ~~his~~the employer's reasonable control, the Director, after an
37 opportunity for a hearing as provided in this Article, shall issue an
38 order affirming or modifying the abatement requirements in such
39 citation. The rules of procedure prescribed by the chairman of the
40 Board shall provide affected employees or representatives of affected
41 employees an opportunity to participate as parties to hearings under
42 this section.
- 43 ~~(5) Notwithstanding subdivision (4) of this section, if an agricultural~~
44 ~~employer notifies the Director that he intends to contest a citation~~

1 issued under the provisions of this Article or notification issued under
2 the provisions of this Article, or if, within 15 working days of the
3 receipt of a citation under this Article, any employee of an agricultural
4 employer or the employee's representative files a notice with the
5 Director alleging that the period of time fixed in the citation for the
6 abatement of the violation is unreasonable, the Director shall
7 immediately advise the person giving such notice of his rights to file a
8 petition for a contested case under the provisions of Article 3 of
9 Chapter 150B. Upon showing by an employer of a good faith effort to
10 comply with the abatement requirements of a citation, and that an
11 abatement has not been completed because of factors beyond his
12 reasonable control, the administrative law judge, after an opportunity
13 for a hearing as provided in Article 3 of Chapter 150B, may issue an
14 order affirming or modifying the abatement requirements in such
15 citation. Affected employees or representatives of affected employees
16 shall be considered aggrieved persons under G.S. 150B-23 for
17 contested cases under this section.

- 18 (6) Each local unit of government shall report each violation for which it
19 is issued a citation to its local governing board at its next public
20 meeting and to its workers compensation insurance carrier or to the
21 risk pool of which it is a member pursuant to Article 23 of Chapter 58
22 of the General Statutes."

23 Sec. 3. G.S. 95-223(1) reads as rewritten:

- 24 "(1) 'Agricultural employment' means employment in any service or
25 activity included within the provisions of Section 3(f) of the Fair Labor
26 Standards Act of 1938, or section 3121(g) of the Internal Revenue
27 Code of 1986; and the handling, planting, drying, packing, packaging,
28 processing, freezing, or grading prior to delivery for storage of any
29 agricultural or horticultural commodity in its unmanufactured state and
30 including the harvesting of Christmas ~~trees;~~ trees, and the harvesting of
31 saltwater crabs;".

32 Sec. 4. This act becomes effective October 1, 1993, and applies to citations
33 issued on or after that date.