

**Employee Guide to Review Commission Procedures:  
Supplement to the Guide to Review Commission Procedures**

**June 2019**

**Table of Contents**

**Section 1 – Introduction**

- Purpose of this Supplement
- Using This Supplement
- The Commission
- Rules of Procedure
- Parties May Represent Themselves
- Time is of the Essence
- Electronic Filing
- Sample Legal Documents
- Questions About Commission Procedure

**Section 2 – Overview of Events and Proceedings**

- OSHA Citation
- Employer’s Notice of Contest
- Informal Conference with OSHA
- Content and Effect of Employer’s Notice of Contest
- Notice of Docketing
- Employee Notification
- Assignment to a Judge
- Party Request for Simplified Proceedings
- Choosing Simplified Proceedings or Conventional Proceedings
- The Complaint
- The Answer
- Hearings
- Judge’s Decision and Petition for Discretionary Review
- Decision Final in 30 Days

**Section 3 – Electing Party Status**

- Introduction
- Election of Party Status by Affected Employees or Their Representatives
- What to File When Filing a Notice of Election of Party Status
- Where to File a Notice of Election of Party Status
- Participation Rights After Electing Party Status
- Participation by Employees or Employee Representatives at a Hearing
- Participation by Employees or Employee Representative in Settlements
- Post-hearing Procedures

**Section 4 – Contesting the Abatement Period Stated in the Citation**

- Employees May Contest Abatement Date
- When and Where to File a Notice of Contest of the Abatement Date
- Secretary Must State Why the Abatement Date is Reasonable
- Employer May Elect Party Status
- Post-hearing Procedures

## Section 5 – Employee Rights Not Within Commission Authority

Commission Does Not Investigate Alleged Safety Hazards  
Commission Does Not Decide Employee Discrimination Claims

## Section 6 – Descriptive Tables of Events – Electing Party Status and Filing Notice of Contest

Descriptive Table of Events When Employee Elects Party Status  
Descriptive Table of Events When Employee Files Notice of Contest

## Section 7 – Descriptive Table of Events Pertaining to Review of an Administrative Law Judge’s Decision

### Glossary

### Appendixes/Sample Legal Documents

First Page of OSHA Citation  
Notices of Contest  
Letters Electing Party Status  
Certificates of Service

## Section 1 – Introduction

### Purpose of this Supplement

This Supplement provides an explanation of the rights that employees or their representatives have that permit them to participate in proceedings before the Occupational Safety and Health Review Commission (“Commission”). There are two rights: (1) election of party status in a Commission case; and (2) filing a notice contesting a citation issued to an employer. In the Commission’s experience most cases in which employees or their representatives exercise their rights involve an election of party status. The two rights are discussed in detail in Sections 3 and 4 of this Supplement.

Participation by an employee or an authorized employee representative occurs in a proceeding conducted before an Administrative Law Judge of the Commission and before the Commission Members if the case is considered for further review. This Supplement provides information to assist affected employees or employee representatives in understanding how to exercise those rights. It will also be useful to other persons who desire an understanding of employee rights.

This Supplement is not intended to provide a thorough overview of all aspects of Commission procedures. **Although other information is included in this Supplement, it is intended to be read together with the Guide to Review Commission Procedures and the Rules of Procedure to obtain a more detailed understanding of the procedures followed by the Commission judges and Commission members in deciding cases.**

The Commission Guides and Rules of Procedure are posted on our website at <https://www.oshrc.gov>. Printed copies may also be obtained by writing or calling:

Executive Secretary  
U.S. Occupational Safety and Health  
Review Commission  
1120 20th Street, N.W., 9th Floor  
Washington, D.C. 20036-3457  
(202) 606-5400

## Using This Supplement

This Supplement describes many of the documents and steps in proceedings before the Commission members and judges. Throughout this Supplement, important terms are shown in **bold** and many are included in the **Glossary**.

## The Commission

The Commission is an independent agency of the U.S. Government established by the Occupational Safety and Health Act of 1970 (“Act”). The Commission functions like a court that resolves certain disputes under the Act. The Commission has three members who are appointed by the President of the United States and confirmed by the Senate for six-year terms. It employs Administrative Law Judges to hear and decide cases, which may include settlement proceedings.

The Act was passed by Congress to “assure safe and healthful working conditions for working men and women.” The Act also established another agency, the Occupational Safety and Health Administration (“OSHA”), which is part of the U.S. Department of Labor, to enforce the law. OSHA issues regulations setting occupational safety and health standards that an employer must follow. As part of its enforcement responsibilities, OSHA may also conduct an inspection of a workplace. If OSHA’s inspectors find what they believe are unsafe or unhealthy conditions, they may issue a **citation** to an employer. A citation includes allegations of workplace safety or health violations, proposed penalties, and proposed dates by which an employer must correct the alleged hazardous conditions.

If the cited employer, an affected employee, or an authorized employee representative disagrees with the citation, they may then file a timely **notice of contest**. The Commission (which is **completely independent** of OSHA) then comes into the picture to resolve the dispute over the citation. A notice of contest filed by an affected employee or an authorized employee representative is subject to the limitations explained in Section 4 of this Supplement.

## Rules of Procedure

The Commission’s Rules of Procedure are published in Part 2200 of Title 29, Code of Federal Regulations (“C.F.R.”). These Rules are posted on the Commission website, <https://www.oshrc.gov>, or may be obtained by contacting the Executive Secretary’s Office at the address or telephone number above. References to the Rules in this Supplement state “see Rule” and the appropriate number. (For example, “see Rule 4” refers to 29 C.F.R. § 2200.4.)

This Supplement is intended to provide an overview of the Commission’s procedures with respect to affected employees and representatives of employees and it is not intended to be a substitute for the Rules of Procedure, which are followed in the Commission’s proceedings in deciding cases. Employees and employee representatives should review the Rules and follow them in proceedings before judges and the Commission members.

## Parties May Represent Themselves

In proceedings before the Commission, an employer, union, or affected employee who is a party to a case may appear in person (self-represented), through an attorney, or through another representative who is not an attorney. However, proceedings before the Commission are legal in nature and certain legal formalities must be followed. OSHA will be represented by lawyers from the **Office of the Solicitor** and the decision in the case may have consequences beyond the amount of the penalty. For example, a decision may require corrective actions at a worksite. Parties to cases should consider carefully whether to hire a lawyer to represent them in their case.

## Time is of the Essence

If affected employees or employee representatives participate in a case as parties, they may be required to file various documents, such as those needed to obtain their position about an OSHA citation or proposed penalty, and they must be filed within a specific time period. Failure to file documents as required could result in a citation issued to an employer by OSHA becoming a final order without an opportunity to appeal. Therefore, affected employees or employee representatives who become parties to cases must respond promptly to communications received from the judge, the Commission, or any of the other parties to the dispute.

### **Electronic Filing**

Parties who are represented by an attorney or a non-attorney representative, must file documents electronically using the Commission's E-File System. Instructions for e-filing are available on the Commission website, located at <https://www.oshrc.gov>. Self-represented parties may choose to use the E-File System or to send documents to the Commission's Executive Secretary or the judge assigned to a case via U.S. Mail. If a self-represented party chooses to e-file, the party must continue to file all documents electronically for the duration of the case.

### **Sample Legal Documents**

The Appendixes contain forms and sample correspondence that may be used or referred to in preparing a case. These sample documents are mentioned throughout this Supplement. The sample form and correspondence are also available on the Commission website, <https://www.oshrc.gov>.

### **Questions About Commission Procedure**

Parties to cases having questions regarding the Commission's procedures in cases pending before a judge should contact the Legal Assistants in the Office of the Chief Administrative Law Judge at 202-606-5405. At other stages of the proceedings, inquiries should be directed to the Executive Secretary's Office at 202-606-5400. Commission employees cannot give legal advice or discuss the merits of a case, but they may be able to explain some Commission procedures.

## **Section 2 – Overview of Events and Proceedings**

### **OSHA Citation**

Cases that come before a Commission judge arise from inspections conducted by OSHA, an agency of the United States Department of Labor. When OSHA finds what it believes to be a **violation** at a worksite, it will notify the employer in writing of the alleged violation and the period of time OSHA thinks is reasonable for correction by issuing a written **citation** to the employer.

The period of time stated in the citation for an employer to correct the alleged violation is the **abatement period**. OSHA likely will also propose that the employer pay a monetary penalty.

The Act requires that the employer **immediately post a copy of the citation** in a place where **affected employees** will see it so that they will have legal notice of it. An affected employee is an employee who has been exposed to or could be exposed to any hazard arising from the cited violations.

The employer has 15 working days to contest the citation. If the citation is not contested by the employer, or by the affected employees as discussed in section 4 of this Supplement, the citation will become a final order of the Commission.

### **Employer's Notice of Contest**

If an employer disagrees with any part of the OSHA citation—the alleged violation, the abatement period, or the proposed penalty—it **must notify OSHA in writing of that disagreement within 15 working**

**days** (Mondays through Fridays, excluding Federal holidays) of receiving the citation. This written notification is referred to as a **notice of contest**, and if it is filed after the deadline, the employer is not usually entitled to have the dispute resolved by the Commission.

The written notice of contest must be **delivered to the Area Director of the OSHA office that mailed the citation within the 15 working day contest period**. But if the notice of contest is sent by U.S. Mail, the notice of contest will be timely if the mailing is postmarked within the 15 working day contest period. The Area Director's name and address will be listed on the citation. **A notice of contest must not be sent to the Commission or filed using the Commission's E-File System.**

### **Informal Conference with OSHA**

If a citation is issued, an employer may schedule an informal conference or engage in settlement discussions with the OSHA Area Director, **but this does not delay the 15 working day** deadline for filing a notice of contest. This means that if an informal conference is conducted that does not result in a written settlement agreement, and a notice of contest has not been filed within the 15 working day deadline, all citation items must be abated and all penalties must be paid.

### **Content and Effect of Employer's Notice of Contest**

The notice of contest is a written statement that an employer intends to contest (1) the alleged violations, (2) the specific abatement periods, and/or (3) the penalties proposed by OSHA. The notice should state in detail those matters being contested.

For example, if there are two citations and the employer wishes to contest only one of them, the citation being contested should be identified. If there are six different items alleged as violations in a single citation and the employer wishes to contest items 3, 4, and 6, those items should be specified.

If the employer wishes to contest the entire penalty, or only the amount for one citation or specific items of one citation, or only the abatement period for some or all of the violations alleged, this should also be specified.

For any item (violation) not contested, the abatement requirements must be fully satisfied and any related penalty must be paid to the Department of Labor. If the employer contests whether a violation occurred, the abatement period and the proposed penalty for that item is suspended until the Commission issues a final decision.

### **Notice of Docketing**

The OSHA Area Director sends the notice of contest, together with the citation and notification of proposed penalty, to the Commission. The Executive Secretary's Office then notifies the employer that the case has been received and assigns a docket number. This docket number must be included on all documents sent to the Commission.

### **Employee Notification**

At the time the employer receives the notice of docketing that the case has been filed and assigned a docket number, the Commission will send the employer a copy of a notice to be used to inform affected employees of the case. A pre-printed post card is sent to the employer with this notice; the employer returns the post card to the Commission to inform it that affected employees have been notified.

### **Assignment to a Judge**

After the case is docketed with the Commission, the parties will receive a notification of assignment from the Chief Administrative Law Judge (“Chief Judge”) that identifies the Commission judge assigned to the case.

### **Party Requests for Simplified Proceedings**

A case heard by a Commission judge may proceed in one of two ways: conventional proceedings or Simplified Proceedings. The Chief Judge may designate a case for Simplified Proceedings soon after the notice of contest is received at the Commission. Parties may also request Simplified Proceedings within 21 days of the date on the notice of docketing. If a case is not designated for Simplified Proceedings, conventional proceedings are in effect.

### **Choosing Simplified Proceedings or Conventional Proceedings**

Simplified Proceedings are appropriate for cases that involve less complex issues and for which more formal procedures used in conventional proceedings are considered unnecessary to assure the parties a fair and complete contest. For example, the parties are not required to file a complaint or answer. The Commission has developed a separate **Guide to Simplified Proceedings** that should be consulted by those persons interested in that method of hearing cases.

### **The Complaint**

Within 21 days of receipt of the employer’s notice of contest, the Secretary must file a written complaint with the Commission. To meet the service requirements of Rule 7, a copy must be served on (i.e., sent to) the employer and any other parties. The complaint sets forth the alleged violation(s), the abatement period and the amount of the proposed penalty. (See Rule 34.)

### **The Answer**

The employer must file a written **answer** to the complaint **with the Commission within 21 days** after the Secretary of Labor serves the complaint. The answer must contain a short, plain statement denying allegations of the complaint that the employer wishes to contest. **Any allegation not denied by the employer is considered to be admitted.** In addition, if the employer has a specific defense it wishes to raise, such as (1) the violation was due to employee error or failure to follow instructions, or (2) compliance with a standard was infeasible, or (3) compliance with a standard posed an even greater hazard, the answer must describe that defense. **If the employer fails to file an answer to the complaint on time, its notice of contest may be dismissed, and the citation and penalties may become final.**

### **Hearings**

Hearings are governed by Rules 60-74. The parties will be notified of the time and place of the hearing at least 30 days in advance. The employer must post the hearing notice if there are any employees who do not have a representative and served on all unions representing affected employees. The hearing is usually conducted as near the workplace as possible.

At the hearing, a Commission judge presides. The hearing enables the parties to present evidence on the issues raised in the complaint and answer. Each party to the proceedings may call witnesses, introduce documentary or physical evidence, and cross-examine opposing witnesses.

In conventional proceedings, the Commission follows the Federal Rules of Evidence. Under these rules, evidence is only admitted into the record if it meets certain criteria that are designed to ensure that the evidence is reliable and relevant.

In Simplified Proceedings, hearings are less formal. The Federal Rules of Evidence do not apply unless the parties agree in writing that the Federal Rules of Evidence will apply in whole or in part. Each party may argue their case orally before the judge at the conclusion of the hearing. The judge may also allow or require post-hearing briefs (written arguments explaining the party's position in the case) or statements of position upon request of either party or on the judge's own motion. In some instances, the judge may render a decision "from the bench," which means the judge will state at the end of the hearing whether the evidence and testimony proved the alleged violations and will state the amount of the penalty the employer must pay, if a violation is found.

### **Judge's Decision and Petition for Discretionary Review**

After hearing the evidence and considering all arguments, the judge will prepare a decision based upon all of the evidence placed in the hearing record and mail copies of that decision to all parties. The parties then can object to the judge's decision by filing a Petition for Discretionary Review. Instructions for submitting such a petition will be stated in the judge's letter transmitting the decision and in a Notice of Docketing of Administrative Law Judge's Decision issued by the Executive Secretary's Office. See Rule 91 for more information on filing Petitions for Discretionary Review.

### **Decisions Final in 30 Days**

If a Commissioner does not direct review of a judge's decision, it becomes a final order of the Commission 30 days after the decision has been filed. If a Commissioner does direct review, the Commission will ultimately issue its own written decision and that decision becomes the final order of the Commission.

Any party who is adversely affected by a final order of the Commission can appeal to a United States Court of Appeals. However, the courts usually will not hear appeals from parties that have not taken advantage of all possible appeal rights earlier in the case. **This means that a party who failed to file a petition for review of the judge's decision with the Commission likely will not be able to later appeal that decision to a court of appeals.**

## **Section 3 – Electing Party Status**

### **Introduction**

This section describes how an affected employee or an authorized employee representative may elect party status in a Commission case that has been contested by an employer. **The Guide to Review Commission Procedures** should be consulted for a more detailed analysis of other events that may occur in a case.

### **Election of Party Status by Affected Employees or Their Representatives**

When an affected employee or an authorized employee representative participates in a Commission case the most frequent method used is to elect party status to the case. If an employer contests a citation, the Executive Secretary notifies the employer that the case has been received and assigns a docket number. An affected employee or an authorized employee representative may then file a Notice of Election of Party Status. (See Rules 7(g), 20, 22, and 100 and Appendixes 3A and 3B). The employer is sent documents pertaining to the case and is required to post a notice to employees stating their right to elect party status. A notice of election filed less than 14 days prior to the hearing is ineffective unless good cause is shown for not timely filing the notice. (See Rule 20(a).)

If an authorized employee representative of a collective bargaining unit elects party status, affected employees who are members of the collective bargaining unit may not separately elect party status. (See Rule 22(b)). Affected employees who are not members of a collective bargaining unit may elect party

status. If more than one affected employee so elects, the judge shall treat them as one party. (See Rule 22(c)).

Affected employees or authorized employee representatives do not need to be represented by an attorney, however, they may obtain the services of an attorney if they choose to do so. (See Rule 22(a)).

### **What to File When Filing a Notice of Election Party Status.**

A Notice of Election of Party Status may be filed by letter and at a minimum need only provide the case name, docket number, the address of the affected employee or authorized employee representative electing party status, and a statement electing party status. Sample letters are provided in Appendixes 3A and 3B.

### **Where to File a Notice of Election of Party Status**

An affected employee or authorized employee representative who files a Notice of Election of Party Status must file the document electronically through the Commission's E-File System if represented by an attorney or non-attorney representative. If an affected employee or authorized employee representative is self-represented and has not chosen to use the Commission's electronic filing system, then the Notice should be filed by sending it to the assigned judge. If a judge has not yet been assigned to the case, then the Notice should be filed by sending it to the Commission's Executive Secretary at the following address:

Executive Secretary  
U.S. Occupational Safety and Health  
Review Commission  
1120 20th Street, N.W., 9th Floor  
Washington, DC 20036-3457

The affected employee or authorized employee representative must also send a copy of the Notice to the other parties to the case and attach a Certificate of Service to that effect. See Rules 7(a) and 7(d) and Appendix 4.

### **Participation Rights After Electing Party Status**

An affected employee or a representative of affected employees who elects party status has several rights:

- **Settlement.** Because most cases before the Commission are settled without a hearing before the judge, if an affected employee or an authorized representative of affected employees elects party status then they would be given an opportunity for input into a **settlement**.
- **Copies of Documents.** An affected employee or an authorized representative of affected employees who becomes a party will receive copies of the documents filed by other parties, the judge, or the Commission.
- **Discovery.** An affected employee or an authorized employee representative of affected employees who becomes a party may request information before the hearing from the employer or the lawyers from the Solicitor of Labor's Office as part of the discovery process. Other parties may also request that affected employees or their authorized employee representative provide relevant information. (See Rules 50 through 56.)
- **Pre-hearing conference.** If the judge holds a pre-hearing conference an employee or an authorized employee representative of affected employees who becomes a party is entitled to take part in the pre-hearing conference.



- **Hearing.** An affected employee or an authorized employee representative of affected employees who becomes a party may participate at the hearing by presenting and questioning witnesses and by introducing other evidence. They also may cross-examine witnesses called by the other parties.
- **Brief.** An affected employee or an authorized representative of affected employees who becomes a party may file a **brief** with the judge after the hearing stating arguments in writing.
- **Review and appeal.** If an affected employee or an authorized representative of affected employees who becomes a party does not agree with the judge's decision, they may ask the Commission to consider the case. This request is made by filing a **petition for discretionary review**. If the Commission agrees to consider the case but issues a decision that affected employees or the authorized representative of affected employees do not agree with, the affected employee or authorized representative of affected employees may petition a U.S. Court of Appeals for judicial review.

### **Participation by Employees or Employee Representatives at a Hearing**

If a case goes to hearing, the affected employee or an authorized representative of affected employees who have elected party status are afforded the right to present their own witnesses and other evidence and to cross-examine witnesses for other parties.

### **Participation by Employees or Employee Representatives in Settlements**

The Secretary and the employer may settle a case at any time including before a hearing has commenced. In these instances, an affected employee or an authorized representative of affected employees must be afforded an opportunity to provide input on all matters pertaining to the settlement before the agreement is finalized. Nevertheless, the Secretary and the employer have the legal authority to settle a matter on terms that may or may not reflect that input.

### **Post-hearing Procedures**

After the judge has issued a decision, an affected employee or an authorized representative of affected employees who has elected party status may file a petition for discretionary review with the Commission if they are adversely affected or aggrieved by the decision of the judge with respect to the abatement date. See the **Guide to Review Commission Procedures** for further information on filing a petition for discretionary review.

## **Section 4 – Contesting the Abatement Period Stated in the Citation**

### **Employees May Contest Abatement Date**

As described in Section 3 above, the most frequent method that affected employees or their representatives use to participate in a case is to elect party status after the employer files a notice of contest of the citation. However, if the employer does not file a notice of contest within fifteen working days after the citation has been issued, the citation will become a final order of the Commission unless an employee or representative of employees files a notice of contest with respect to the abatement date. See Section 10(a) of the Act and Commission Rules 20(c), 22, and 33(c).

### **When and Where to File a Notice of Contest of the Abatement Date**

An employee or representative of employees who intends to file a notice of contest of the abatement date **must file it within 15 working days of the employer's receipt of a citation**. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown on the Citation and Notification of Penalty and postmarked within 15 working days (excluding weekends and Federal holidays) of the

receipt by the employer of the citation. See Section 10(a) of the Act and Commission Rules 20(c), 22, and 33(c). The notice of contest must not be mailed to the Commission.

An authorized employee representative who files a notice of contest is responsible for serving any other authorized employee representative whose members are affected employees. See Rules 7(a), 7(m) and Appendix 4.

When the OSHA Area Office receives the notice of contest from an employee or representative of employees, the OSHA Area Office will forward the notice of contest to the Commission's Executive Secretary. The case will then be docketed and processed in accordance with Rule 38.

### **Secretary Must State Why the Abatement Date is Reasonable**

Within 14 days from receipt of the notice of contest the Secretary shall file a clear and concise statement of the reasons showing why the abatement period prescribed in the citation is not unreasonable. The employee or representative of employees must then file a written response with 14 days after receipt of the Secretary's statement. See Rule 38. The case will then be assigned for hearing.

### **Employer May Elect Party Status**

If an employee or authorized employee representative files a notice of contest (and the employer decides not to file one), the employer may elect party status by a notice filed at least 14 days before the hearing. The employer may then participate in the hearing and present evidence concerning the contested abatement date. See Rule 20(c).

### **Post-hearing Procedures**

After the judge has issued a decision, an employee or employee representative who has filed a notice of contest may file a petition for discretionary review with the Commission if they are adversely affected or aggrieved by the decision of the judge with respect to abatement date. See the **Guide to Review Commission Procedures** for further information on filing a petition for discretionary review.

## **Section 5 – Employee Rights Not Within Commission Authority**

### **Commission Does Not Investigate Alleged Safety Hazards**

If an employee or representative of employees believes that a safety hazard exists at their workplace and they want to request that Federal officials conduct an investigation, they must contact the OSHA area office closest to their place of employment. The Commission does not investigate alleged safety hazards.

The addresses and telephone numbers of OSHA area offices as well as information on how to file a safety complaint are listed on OSHA's website at [www.osha.gov](http://www.osha.gov).

### **Commission Does Not Decide Employee Discrimination Claims**

**Section 11 of the Act** prohibits employers from discharging or discriminating against an employee because the employee has exercised rights under the Act. The Commission does not decide employee discrimination claims.

Employees who believe that they have been discriminated against, including discrimination based on complaints to OSHA and for seeking an OSHA inspection, participating in an OSHA inspection, and participating or testifying in any proceeding related to an OSHA inspection, may file a discrimination complaint with OSHA. See OSHA's website at [www.osha.gov](http://www.osha.gov) or contact an OSHA area office for further information.

## **Section 6 – Descriptive Table of Events—Electing Party Status and Filing Notice of Contest**

### **Descriptive Table of Events When Employee Files Election of Party Status**

- OSHA issues a **citation** to employer, who must **post** it immediately upon receipt where it can be seen by employees.
- Employer files notice of contest.
- The Commission docket the case (logs it in and gives it a number) and issues a notice of docketing to the parties.
- Affected employee or representative of affected employee files election of party status. (If not filed immediately after Commission docket the case, it must be filed at least 14 days before hearing.) It must be served on all parties in accordance with Rule 7. (See Appendix 3.)
- Case is assigned to a Commission judge.
- The judge may hold a **pre-hearing conference**.
- The judge schedules a **hearing**, at which the parties may question witnesses and present other evidence.
- The judge issues a **decision**. Any party that disagrees with it may file a petition for discretionary review with the Commission.
- If the Commission agrees to review the case, it generally requests briefs and later issues a decision. A party that disagrees with that decision may file a petition for review with a U.S. Court of Appeals.

### **Descriptive Table of Events When Employee Files Notice of Contest**

- OSHA issues a **citation** to employer, who must **post** it immediately upon receipt where it can be seen by employees.
- Employer may or may not file a notice of contest. If the employer files a notice of contest, it must be filed within 15 working days of the employer's receipt of the citation.
- Employee or representative of employees files a **notice of contest** (with the Area Director at the OSHA Office that issued the citation) objecting to the reasonableness of the abatement period. The notice of contest must be postmarked within **15 working days** (excluding weekends and Federal holidays) of employer's receipt of the citation and notification of penalty. OSHA forwards the notice of contest to the Commission. The employee or representative of employees automatically becomes a **party** to the case.
- The Commission docket the case (logs it in and gives it a number) and issues a notice of docketing to the parties.
- The case is automatically expedited.
- The Secretary of Labor must file a statement of the reasons why the abatement period is reasonable **within 14 days** of receiving the notice of contest.

- After the Secretary's statement is received, a response must be filed **within 14 days**.
- The judge may hold a **pre-hearing** conference.
- The judge schedules a hearing, at which the parties may question witnesses and present other evidence.
- The judge issues a decision. Any party that disagrees with it may file a petition for discretionary review with the Commission.
- If the Commission agrees to review the case, it generally requests briefs and later issues a decision. A party that disagrees with that decision may file a petition for review with a U.S. Court of Appeals.

### **Section 7 – Descriptive Table of Events Pertaining to Review of an Administrative Law Judge's Decision**

**If a party is adversely affected or aggrieved by a Commission judge's decision and wishes to seek review by the Commission members, the party:**

- Files petition for discretionary review of the judge's decision.
- Receives notification from Commission that case is or is not directed for review.

**If the case is not directed for review, the judge's decision is a final order of the Commission and the party may file a petition for review in a U.S. Court of Appeals.**

**If the case is directed for review, all parties:**

- Receive a request from Commission for briefs on review.
- File briefs on review before Commission.
- Receive the Commission decision that may affirm, modify, or reverse the judge's decision. In some cases, the case may be sent back to the judge for further proceedings.
- May file petition for review in U.S. Court of Appeals if adversely affected or aggrieved by the Commission decision.

**See also Rules 90-96.**

### **Glossary**

**Abatement Period** – Period of time specified in citation for correcting alleged workplace safety or health violation.

**Affected Employee** – An employee of a cited employer who has been exposed to or could be exposed to any hazard arising from the cited violations—that is the circumstances, conditions, practices, or operations creating the hazard.

**Answer** – Written document filed in response to a complaint, consisting of short plain statements responding to each of the allegations in the complaint which the employer contests.

**Authorized Employee Representative** – A labor organization, such as a union, that has a collective bargaining relationship with the employer and represents affected employees who are members of the collective bargaining unit.

**Brief** – Written document in which a party states what the party believes are the facts of the case and argues how the law should be applied.

**Certificate of Service** – Written document stating the date and manner in which the parties were served (given) a document. See Appendix 4 for sample certificate. (Also see definition of “service.”)

**Citation** – Written notification from OSHA of alleged workplace violation(s), proposed penalty(ies), and abatement period.

**Complaint** – Written document filed by the Secretary of Labor detailing the alleged violations contained in a citation.

**Conventional Proceedings** – Typical Commission proceedings, which are similar to court proceedings.

**Discovery** – The process by which one party obtains information from another party prior to a hearing.

**Exhibit** – A document, photo, video, object, etc., that is formally offered as evidence at a hearing.

**File** – To submit documents to the Commission electronically through the Commission’s E-File System or to send documents by some other means to the Commission’s Executive Secretary or to the judge assigned to a case. (See “Service” below regarding providing a filed document to the other parties.)

**Interlocutory Appeal** – An appeal of a judge’s ruling on a preliminary issue in a case that is made before the judge issues a final decision on the full case. These types of appeals are infrequently made and are infrequently allowed. One example of an issue often raised in an interlocutory appeal is whether certain material that a party wants kept confidential, such as an employer’s trade secrets or employee medical records, should become part of the public record in a case.

**Motion** – Oral or written request asking that the judge direct some act to be done in favor of the party making the request or motion.

**Notice of Appearance** – Written letter informing the Commission of the name and address of the person or persons who will represent a party in a case.

**Notice of Contest** – Written document disagreeing with any part of an OSHA citation.

**Notice of Docketing** – Written document from the Commission’s Executive Secretary telling an employer, the Secretary of Labor, and any other parties in a case that the case has been received by the Commission and given an OSHRC docket number.

**Notice of Withdrawal** – Written document from a party withdrawing its notice of contest or the citation and thus terminating the proceedings before the Commission.

**Party** – The Secretary of Labor, anyone who files a notice of contest, or a union or affected employee(s) with party status.

**Petition for Discretionary Review** – Written request from a party in a case asking the Commission to review the judge’s decision. The grounds on which a party may request discretionary review are: (1) it believes the judge made findings of material facts which are not supported by the evidence; (2) it believes that the judge’s decision is contrary to law; (3) it believes that a substantial question of law, policy, or abuse of discretion is involved; or (4) it believes that a prejudicial error was committed.

**Secretary of Labor** – The head of the U.S. Department of Labor. OSHA is part of that Department.

**Service** – Sending by email, first class mail, personal delivery, or facsimile transmission a copy of documents filed in a case to all parties in the case. See Definitions of “Certificate of Service” and “File.” (See Rule 7.)

**Settlement** – An agreement reached by the parties resolving the disputed issues in a case.

**Simplified Proceedings** – Commission proceedings that are less formal than conventional proceedings and designed for smaller and relatively simple cases.

**Solicitor of Labor** – The U.S. Department of Labor’s chief lawyer who has offices throughout the country. Lawyers from these offices represent the Secretary of Labor and OSHA in Commission cases.

### **Appendixes/Sample Legal Documents**

This section is not intended to be a manual of forms, and the sample legal documents here are limited in number. The sample legal documents are intended for illustration to familiarize the reader with the general nature of some of the documents received and issued. Many of the documents received by the Commission, such as those in Appendixes 2 and 3 (Notices of Contest and Letters Electing Party Status), vary significantly from case to case. These and other sample legal documents are also available on the Commission’s website, <https://www.oshrc.gov>.

### **Appendix 1 – First Page of OSHA Citation**

**[Note: The citation contains a number of pages. Shown here is an example of the first page, which is what would be on top when the citation is posted.]**

**U.S. Department of Labor**  
Occupational Safety and Health Administration  
123 Street  
City, State Zip Code

### **Citation and Notification of Penalty**

**To:**  
ABC Corporation  
and its successors  
456 Street  
City, State Zip Code

**Inspection Number:** 909090909  
**Inspection Date(s):** 03/20/19 - 03/30/19  
**Issuance Date:** 05/21/19

**Inspection Site:**  
456 Street  
City, State Zip Code

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the

violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

**Posting** – The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer’s operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** – An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

## **Appendix 2 – Notices of Contest**

### **Appendix 2A. Notice of Contest by Authorized Employee Representative**

GHI International Union  
123 Street  
City, State Zip Code

June 7, 2019

Jane Doe, Area Director  
Occupational Safety and Health Administration  
U.S. Department of Labor, Federal Building  
456 Road  
City, State Zip Code

Dear Ms. Doe:

We have been authorized by the employee representative, GHI International Union, to file this notice of contest to the OSHA citations issued on June 3, 2019, against the employer, XYZ Co. The abatement dates of June 27, 2019, for Items No. 1 and No.3 of the non-serious citation, and January 6, 2020 for Item No. 1 of the serious citation, are unreasonable and will continue to expose workers to safety hazards.

Sincerely,

Director  
Safety Department  
GHI International Union

### **Appendix 2B. Notice of Contest by Employee**

123 Street  
City, State Zip Code

June 7, 2019

Jane Doe, Area Director  
Occupational Safety and Health Administration  
U.S. Department of Labor, Federal Building  
456 Road  
City, State Zip Code

Dear Ms. Doe:

As an employee affected by the hazards cited by OSHA when it inspected my employer, VXY Corp. of City, State, I contest the abatement dates OSHA proposed in the citation it issued to VXY Corp. on June 3, 2019. The abatement dates of March 13, 2020, for Items No. 1 and No. 3 of the serious citation, and December 5, 2019, for Item No. 1 of the non-serious citation, are unreasonable and will continue to expose workers to safety hazards.

Sincerely yours,

Employee of VXY Corp.

### **Appendix 3 – Letters Electing Party Status**

#### **Appendix 3A. Letter Electing Party Status by Authorized Employee Representative (Union)**

Workers Union, Local 101  
123 Street  
City, State Zip Code

June 10, 2019

Executive Secretary  
Occupational Safety and Health Review Commission  
1120 20th Street, N.W., 9th Floor  
Washington, D.C. 20036-3419

Dear Sir or Madam:

Local 101 of the Workers Union, the authorized employee representative for affected employees of QRS, Inc. of City, State, elects party status in OSHRC Docket No. 99-9999. We request that copies of documents and correspondence in this case be sent to us at the address above. We are also interested in participating in settlement discussions.

Sincerely,

President, Local 101

#### **Appendix 3B. Letter Electing Party Status by Affected Employee**

456 Street  
City, State Zip Code

June 10, 2019

Judge  
Occupational Safety and Health Review Commission  
1120 20th Street, N.W., 9th Floor  
Washington, D.C. 20036-3419



Dear Sir or Madam:

As an employee affected by the hazards cited by OSHA when it inspected my employer, DEF Co. of City, State, I elect party status in OSHRC Docket No. 99-9999. I request that copies of documents and correspondence in this case be sent to me at the address above. I am also interested in participating in settlement discussions.

Sincerely yours,

Employee of DEF Co.

**Appendix 4 – Certificates of Service\***

**CERTIFICATE OF SERVICE**

**[Represented parties – mandatory electronic filing].**

This is to certify that service of the Joint Notification of Settlement filed in the Commission's E-File System was also simultaneous served by email attachment to the parties listed below on

\_\_\_\_\_.

**[Self-Represented party – non-electronic filing].**

This is to certify that a copy of the Joint Notification of Settlement was served by first class, postage prepaid, U.S. Mail to the parties listed below on \_\_\_\_\_.

\_\_\_\_\_/s/\_\_\_\_\_

Name Title  
Company / Firm Name / Office of the Solicitor  
Street Address  
City, State, Zip Code  
Email Address

\* A similar document must accompany all other documents requiring a certificate of service.