



STATE OF WASHINGTON

BOARD OF INDUSTRIAL INSURANCE APPEALS

2430 Chandler Ct SW PO Box 42401 • Olympia, WA 98504-2401 • (360) 753-6823 • www.biaa.wa.gov

MANDATORY EMPLOYEE/UNION NOTIFICATION REQUIREMENTS

We received your appeal contesting a Citation and Notice or Corrective Notice of Redetermination alleging violations of the Washington Industrial Safety and Health Act (WISHA). Any employee affected by the alleged violations and/or your appeal has a right to participate in proceedings before the Board of Industrial Insurance Appeals (BIIA).

You must:

- Notify employees of the appeal by posting the enclosed Notice to Employees and a copy of the appeal in a conspicuous place at your business or worksite and/or by giving copies to all employee members of your safety committee. WAC 263-12-059 (2)(a).
- Notify us of any labor union representing employees affected by the alleged violations. WAC 263-12-059 (1)(c) and WAC 263-12-059 (2)(b).
- Complete the enclosed Certification of Unions and Notice to Employees and return to us to show compliance with WAC 263-12-059 (2)(c). Failure to complete and return this form may adversely affect the final decision in your appeal.

If you have already complied with these notice provisions, please disregard this letter.

If you have any questions please call Assistant Chief Industrial Appeals Judge Cheryl F. Carlson at (360) 753-6823.

WAC 263-12-059

Appeals arising under the Washington Industrial Safety and Health Act; contents of notice of appeal; notice to affected employees; request for stay of abatement pending appeal.

(1) **Contents of notice of appeal in WISHA appeals.** In all appeals arising under the Washington Industrial Safety and Health Act, the notice of appeal should contain where applicable:

(a) The name and address of the appealing party and of the party's representative, if any.

(b) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from. This requirement may be satisfied by attaching a copy of the citation, penalty assessment, or notice of abatement date.

(c) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation(s). If the employer has no affected employees who are members of a union, the employer shall affirmatively certify that no union employees are affected by the appeal.

(d) The reason why the appealing party considers such order or decision, to be unjust or unlawful.

(e) A statement of facts in full detail in support of each stated reason.

(f) The specific nature and extent of the relief sought.

(g) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held.

(h) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true.

(i) The signature of the appealing party or the party's representative.

In all appeals where a stay of abatement of alleged violation(s) pending appeal is requested, the notice of appeal must comply with additional requirements set forth in subsection (3) of this section.

(2) Employer duty to notify affected employees.

(a) In the case of any appeal by an employer concerning an alleged violation of the Washington Industrial Safety and Health Act, the employer shall give notice of such appeal to its employees by either:

(i) Providing copies of the appeal to each employee member of the employer's safety committee; or

(ii) By posting a copy of the appeal in a conspicuous place at the work site at which the alleged violation occurred. Any posting shall remain during the pendency of the appeal.

(b) The employer shall also provide notice advising interested employees that an appeal has been filed with the board and that any employee or group of employees who wish to participate in the appeal may do so by contacting the board. Such notice shall include the address of the board.

(c) The employer shall file with the board a certificate of proof of compliance with this section within fourteen days of issuance of the board's notice of filing of appeal. A certification form is provided on the board's web site.

(3) Request for a stay of abatement in WISHA appeals.

(a) **How made.** Any request for stay of abatement pending appeal must be included in the notice of appeal. An employer may request a stay of abatement pending appeal by placing "STAY OF ABATEMENT REQUESTED" prominently on the first page of the notice of appeal in bold print. The board will issue a final decision on such requests within forty-five working days of the board's notice of filing of appeal.

(b) Union information.

(i) **Appeals from corrective notice of redetermination.** In appeals where the employer has requested a stay of abatement of the violation(s) alleged in the corrective notice of redetermination, the employer shall include in the notice of appeal the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall affirmatively inform the board that no union employees are affected by the appeal.

(ii) **Appeals from citation and notice.** Where an employer files an appeal from a citation and notice and the department of labor and industries chooses to forward the appeal to the board to be treated as an appeal to the board, the employer shall provide the board with the names and addresses of any unions representing workers for the employer as required by subsection (1) of this section. If the employer has no affected employees who are members of a union, the employer shall inform the board that no union employees are affected by the appeal. The employer shall provide this information to the board within fourteen days of the date of the board's notice of filing of appeal.

(c) Supporting and opposing documents.

(i) **Supporting documents.** In appeals where the employer has requested a stay of abatement pursuant to RCW 49.17.140, the employer shall, within fourteen calendar days of the date of the board's notice of filing of appeal, file with the board supporting declarations, affidavits, and documents it wishes the board to consider in deciding the request. The employer must also simultaneously provide supporting documents to the department and any affected employees' safety committee or union representative. Supporting affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant

supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(ii) **Opposing documents.** Within twenty-eight calendar days of the date of the board's notice of filing of appeal, the department of labor and industries and any affected employees shall file with the board any declarations, affidavits, and documents they wish the board to consider in deciding the request. The department must also simultaneously serve these opposing documents on the employer and any affected employees' safety committee or representative. The employees must also simultaneously serve the opposing documents on the employer and the department. Supporting and opposing affidavits and declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of individual relevant supporting documents shall be specifically referred to in the affidavit and shall be attached to the affidavit. Such supporting documents shall not be excluded from consideration based on a hearsay objection. All such affidavits and supporting documents shall be limited to evidence addressing:

(A) Whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and

(B) Whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

(4) **Denial of request to stay abatement.** If any of the following procedural or substantive grounds are present, the board will deny the request for a stay of abatement pending appeal:

(a) The request for stay of abatement is not contained in the employer's notice of appeal as required by RCW 49.17.140 (4)(a).

(b) The employer fails to include union information as required in subsection (3)(b) of this section.

The employer fails to timely file a certification that its employees have been notified about the appeal and the request for stay of abatement as required in subsection (2) of this section.

(c) The employer fails to file supporting documents within fourteen calendar days of the issuance of the board's notice of filing of appeal as required in subsection (3)(c)(i) of this section.

(d) The request is moot.

(e) The only violation alleged by the department of labor and industries is a general violation.

(f) The employer fails to show good cause for a stay of abatement in its supporting documents.

(g) The preliminary evidence shows it is more likely than not that a stay would result in death or serious physical harm to a worker.

(5) **Expedited nature of requests to stay abatement/requests to enlarge time.** Requests to stay abatement pending appeal must be decided in accordance with a strict statutory timeline. Oral argument will not be permitted. The board will grant requests to enlarge time to file documents or certifications only after receipt of a written motion with supporting affidavit filed with the board and all other parties before the filing deadline and only upon a showing of good cause.

CERTIFICATION OF UNIONS AND NOTICE TO EMPLOYEES

Failure to return this form may adversely affect the final decision in your appeal.

Employer: _____

Citation & Notice No.: _____ **Docket No.** *(If known):* _____

Do your employees belong to a union? Yes No

Union Name: _____

Union Address: _____

City: _____ State: _____ Zip: _____

Business Agent's Name: _____ Phone: _____

Employees have been notified by:

Posting at the work site:

- a copy of the notice of appeal **and**
- the address and phone number of the Board of Industrial Insurance Appeals .

Date posted: _____

and/or

Providing to employee members of the safety committee:

- copies of the notice of appeal **and**
- the address and phone number of the Board of Industrial Insurance Appeals
- Date provided: _____

I certify under penalty of perjury under the laws of the State of Washington, that the above information is true and correct to the best of my knowledge.

Dated: _____, 20____, at _____, Washington.

(Signature)

Name and Title (printed)

Our address is on the back. You may fold this form in thirds, staple, and mail.

From: _____

Place
Stamp
Here

BOARD OF INDUSTRIAL INSURANCE APPEALS
NEW APPEALS SECTION
PO BOX 42401
OLYMPIA, WA 98504-2401

Important:
Notice To Employees

WISHA APPEAL PENDING

This employer has filed an appeal with the Board of Industrial Insurance Appeals (BIIA) contesting alleged violations of the Washington Industrial Safety and Health Act (WISHA). A copy of the notice of appeal is attached. You have the right to receive notice of and participate in any proceedings concerning this appeal.

If any employee or group of employees wishes to participate in BIIA proceedings please contact the BIIA at:

Board of Industrial Insurance Appeals
PO Box 42401
Olympia WA 98504-2401
(360) 753-6823