

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 300
HOUSE BILL 1047

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 G.S. 95-135(j) is repealed.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 ~~he~~ the employer wishes to contest to:

a. Contest the citation or proposed assessment of ~~penalty.~~ penalty;
or

b. Request an informal conference.

Following an informal conference, unless the employer and Department have entered into a settlement agreement, the Director shall send the employer an amended citation or notice of no change. The employer has 15 working days from the receipt of the amended citation or notice of no change to notify the Director that the employer wishes to contest the citation or proposed assessment of penalty, whether or not amended. If, within 15 working days from the receipt of the notice issued by the Director, the employer fails to notify the Director that ~~he~~ 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 proposed to the Commissioner shall be deemed final and not subject to review by any court.

(2) If the Director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Board in case of any review

proceedings under this Article initiated by the employer in good faith and not solely for a delay or avoidance of penalties), the Director shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under this Article by reason of such failure and that the employer has 15 working days within which to notify the Director that ~~he~~the employer wishes to contest the Director's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the Director, an employer fails to notify the Director that ~~he~~the employer intends to contest the notification or proposed recommendation of penalty, the notification and the proposed assessment made by the Director shall be final and not subject to review by any court.

- (3) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.
- (4) If an employer notifies the Director that ~~he~~the employer intends to contest a citation issued under the provisions of this Article or notification issued under the provisions of this Article, or if, within 15 working days of the receipt of a citation under this Article, any employee or ~~his~~representative thereof files a notice with the Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Director shall immediately advise the Board of such notification, and the Board shall afford an opportunity for a hearing. The Board shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Director's citation or the proposed penalty fixed by the Commissioner, or directing other appropriate relief, and such order shall become final 30 days after its issuance. Upon showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that an abatement has not been completed because of factors beyond ~~his~~the employer's reasonable control, the Director, after an opportunity for a hearing as provided in this Article, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the chairman of the Board shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.
- ~~(5) Notwithstanding subdivision (4) of this section, if an agricultural employer notifies the Director that he intends to contest a citation issued under the provisions of this Article or notification issued under the provisions of this Article, or if, within 15 working days of the receipt of a citation under this Article, any employee of an agricultural employer or the employee's representative files a notice with the Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Director shall~~

~~immediately advise the person giving such notice of his rights to file a petition for a contested case under the provisions of Article 3 of Chapter 150B. Upon showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that an abatement has not been completed because of factors beyond his reasonable control, the administrative law judge, after an opportunity for a hearing as provided in Article 3 of Chapter 150B, may issue an order affirming or modifying the abatement requirements in such citation. Affected employees or representatives of affected employees shall be considered aggrieved persons under G.S. 150B-23 for contested cases under this section.~~

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

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

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

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

In the General Assembly read three times and ratified this the 7th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives