

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1047

Senate Manufacturing and Labor Committee Substitute Adopted 6/28/93

Short Title: OSHA Appeal Changes.

(Public)

Sponsors:

Referred to:

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 G.S. 95-135(j) is repealed.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

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

1 citation or notice of no change to notify the Director that the employer
2 wishes to contest the citation or proposed assessment of penalty,
3 whether or not amended. If, within 15 working days from the receipt
4 of the notice issued by the Director, the employer fails to notify the
5 Director that ~~he~~ the employer requires an informal conference to be
6 held or intends to contest the citation or proposed assessment of
7 penalty, and no notice is filed by any employee or representative of
8 employees under the provisions of this Article within such time, the
9 citation and the assessment as proposed to the Commissioner shall be
10 deemed final and not subject to review by any court.

11 (2) If the Director has reason to believe that an employer has failed to
12 correct a violation for which a citation has been issued within the
13 period permitted for its correction (which period shall not begin to run
14 until the entry of a final order by the Board in case of any review
15 proceedings under this Article initiated by the employer in good faith
16 and not solely for a delay or avoidance of penalties), the Director shall
17 notify the employer by certified mail of such failure and of the penalty
18 proposed to be assessed under this Article by reason of such failure
19 and that the employer has 15 working days within which to notify the
20 Director that ~~he~~ the employer wishes to contest the Director's
21 notification of the proposed assessment of penalty. If, within 15
22 working days from the receipt of notification issued by the Director, an
23 employer fails to notify the Director that ~~he~~ the employer intends to
24 contest the notification or proposed recommendation of penalty, the
25 notification and the proposed assessment made by the Director shall be
26 final and not subject to review by any court.

27 (3) No citation may be issued under this section after the expiration of six
28 months following the occurrence of any violation.

29 (4) If an employer notifies the Director that ~~he~~ the employer intends to
30 contest a citation issued under the provisions of this Article or
31 notification issued under the provisions of this Article, or if, within 15
32 working days of the receipt of a citation under this Article, any
33 employee or ~~his~~ representative thereof files a notice with the Director
34 alleging that the period of time fixed in the citation for the abatement
35 of the violation is unreasonable, the Director shall immediately advise
36 the Board of such notification, and the Board shall afford an
37 opportunity for a hearing. The Board shall thereafter issue an order,
38 based on findings of fact, affirming, modifying, or vacating the
39 Director's citation or the proposed penalty fixed by the Commissioner,
40 or directing other appropriate relief, and such order shall become final
41 30 days after its issuance. Upon showing by an employer of a good
42 faith effort to comply with the abatement requirements of a citation,
43 and that an abatement has not been completed because of factors
44 beyond ~~his~~ the employer's reasonable control, the Director, after an

1 opportunity for a hearing as provided in this Article, shall issue an
2 order affirming or modifying the abatement requirements in such
3 citation. The rules of procedure prescribed by the chairman of the
4 Board shall provide affected employees or representatives of affected
5 employees an opportunity to participate as parties to hearings under
6 this section.

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

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

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

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

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