

# OSHA CITATIONS from an Attorney's Perspective

Workers' Compensation  
Educational Conference

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# Introduction

- The Federal Occupational Safety and Health Act of 1970 (“OSH Act”) was adopted to ensure safe and healthful working conditions.
- The OSH Act seeks to accomplish this goal by:
  - Adopting safety/health standards
  - Penalizing employers who violate safety/health standards
  - Authorizing State Plans to adopt and enforce safety and health standards as long as the plan is “as effective as” Federal Plan

# State Plans

- 20 states cover private employers, state and local governments
- 6 states cover state and local government only
- Nevada has a state plan covering private employers, state and local governments

# NEVADA STATE PLAN

- Created by legislation (Occupational Safety and Health Act) in 1973 (Senate Bill 629)
- Originally part of the Nevada Industrial Commission
- Now, Occupational Safety & Health Administration (“NV OSHA”), Division of Industrial Relations, Department of Business & Industry

# Nevada Standards

- Nevada may adopt its own safety/health standards NRS 618.295
- Nevada requires employers with 11 or more employees to have a written safety program NRS 618.383
- Federal OSHA safety/health standards are “deemed” to be Nevada standards unless equivalent standards are adopted NRS 618.295

# VIOLATIONS & PENALTIES

- Nonserious & Serious, not more than \$7,000
- Willful or repeated, not more than \$70,000 but not less than \$5,000
- Failure to correct violations, not more than \$7,000 for each day
- Willful violation causing death, 1<sup>st</sup> Misdemeanor, \$50,000 or 6 months or both; 2<sup>nd</sup> Gross Misdemeanor \$100,000 or 364 days, or both

# CITATIONS - CONTESTS

- Not issued for violations over 6 months
- Are served by certified mail
- Must be posted even if contested
- Employer/employee must file “notice of contest” within 15 working days
- Employer’s contest may apply to citation, penalty and/or abatement; employee contest is limited to abatement
- Not reviewable If uncontested

# CITATION RESOLUTION

- Pre-contest, informal conference with District Manager
- Post-contest, with Chief Administrative Officer (optional)
- Division Counsel (optional)
- Nevada Occupational Safety & Health Review Board (no ALJ)



# Nevada Occupational Safety & Health Review Board Practice

- Filing by first class, certified mail, return receipt, or personal delivery NAC 618.695
- NV OSHA files complaint w/in 20 days of receipt of notice of contest NAC 618.746
- Employer must file answer w/in 15 of service of complaint NAC 618.649
- Absent leave of Review Board, discovery is limited to requests for admission NAC 618.800
- Before hearing parties may file Statement of Position NAC 618.737

# Nevada Occupational Safety & Health Review Board Members

- 5 members appointed by the Governor
- 4 year terms (limit two terms)
- 2 members from management
- 2 members from labor
- 1 member from the general public
- Chairman, elected by members, conducts hearing on 2<sup>nd</sup> Wednesday of month (assisted by private counsel)

# NV OSHA

## What next?

- Increase fines? (Federal OSHA is proposing to increase maximum penalty for serious penalty from \$7,000 to \$12,471 and willful/repeated from \$70,000 to 124,709)
- Increase time for filing notice of contest from 15 working day to 30 calendar days? (Oregon)
- Allow electronic filing (contest, answer, etc.)

# Continued ....

- Separate enforcement and resolution personnel (Oregon)
- Increase transparency by providing free copies (electronically) to employers/employees who contest citations
- Allow appeals to Administrative Law Judges (Federal OSHA and some states)
- Create advisory boards (Federal OSHA and some states)

# Continued ....

- Increase use of electronic devices
- Separate licensing functions from OSHA enforcement (asbestos, photovoltaic, etc.)
- Increase number of compliance officers