

House Engrossed

occupational safety; advisory committee; enforcement

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 78

HOUSE BILL 2160

AN ACT

AMENDING SECTIONS 23-409 AND 23-417, ARIZONA REVISED STATUTES; AMENDING
SECTION 23-417, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; RELATING
TO THE DIVISION OF OCCUPATIONAL SAFETY AND HEALTH.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-409, Arizona Revised Statutes, is amended to
3 read:

4 23-409. Advisory committees

5 A. The commission shall create an occupational safety and health
6 advisory committee to assist the commission in drafting standards and
7 regulations. ~~The committee shall also recommend names to be considered by~~
8 ~~the governor as members of the review board, established pursuant to~~
9 ~~section 23-422, and~~ The committee may be asked to perform other functions
10 as may be necessary. ~~Such~~ THE committee shall be appointed by the
11 commission and shall be composed of a reasonably balanced representation
12 of regulated industries, including agriculture, and labor and other
13 persons knowledgeable in safety and health and shall serve at the will of
14 the commission. The commission may establish other committees as it deems
15 necessary. ~~Such~~ THE advisory committees may be paid their reasonable and
16 necessary travel and other expenses in accordance with standard travel
17 regulations.

18 B. The director shall be an ex officio member of any advisory
19 committee established pursuant to this section.

20 Sec. 2. Section 23-417, Arizona Revised Statutes, is amended to
21 read:

22 23-417. Enforcement procedure

23 A. If the director, following an inspection or investigation,
24 issues a citation pursuant to section 23-415 ~~he shall~~ THE DIRECTOR, within
25 a reasonable time after termination of the inspection or investigation,
26 SHALL notify the employer by mail of any penalty proposed to be assessed
27 pursuant to section 23-418 and that the employer has fifteen working days
28 within which to notify the director in writing if ~~he~~ THE EMPLOYER wishes
29 to contest the citation or proposed assessment of penalty. If the
30 employer fails to notify the director in writing within fifteen working
31 days of receipt of the notice that ~~he~~ THE EMPLOYER intends to contest the
32 citation or penalty and ~~no~~ A notice is NOT filed by any employee or
33 representative of employees pursuant to subsection D of this section
34 within such time, the citation and the assessment, as proposed, shall be a
35 final order of the commission and not subject to review by any court or
36 agency, EXCEPT THAT THE DIRECTOR MAY EXCUSE ANY LATE NOTIFICATION TO
37 CONTEST A CITATION ONLY IF THE EMPLOYER TO WHOM THE NOTICE WAS SENT SHOWS
38 BY CLEAR AND CONVINCING EVIDENCE THAT THE NOTICE WAS NOT RECEIVED.

39 B. The period ~~permitted~~ ALLOWED for correction of a violation shall
40 not begin to run until the entry of a final order in the case of any
41 review proceedings pursuant to this section initiated by the employer in
42 good faith and not solely for delay or avoidance of penalties. If the
43 division has reason to believe an employer has failed to correct a
44 violation for which a citation has been issued within the period ~~permitted~~
45 ALLOWED, the director shall notify the employer by mail of such failure,

1 of the penalty proposed to be assessed pursuant to section 23-418 and that
 2 the employer has fifteen working days within which to notify the director
 3 in writing if ~~he~~ THE EMPLOYER wishes to contest the notification or
 4 proposed assessment of penalty. If the employer fails to notify the
 5 director in writing within fifteen working days of receipt of the notice
 6 that ~~he~~ THE EMPLOYER intends to contest the notice or penalty, the notice
 7 and assessment, as proposed, shall be deemed a final order of the
 8 commission and not subject to review by any court or agency.

9 C. Any employer who corrects the violations for which a citation
 10 was issued within the period ~~permitted~~ ALLOWED shall so notify the
 11 director in writing.

12 D. Any affected employee or employee representative may request a
 13 hearing to appeal the period allowed an employer to abate a particular
 14 violation pursuant to section 23-420 if ~~he~~ THE AFFECTED EMPLOYEE OR
 15 EMPLOYEE REPRESENTATIVE files ~~such~~ THE appeal with the director within the
 16 abatement period allowed in the citation or within fifteen days ~~from~~ AFTER
 17 the date of receipt of the citation, whichever is shorter.

18 E. ~~upon~~ ON a showing by an employer of a good faith effort to
 19 comply with the abatement requirements of a citation, and that abatement
 20 has not been completed because of factors beyond the reasonable control of
 21 the employer, the commission or its authorized designee, after an
 22 opportunity for a hearing as provided in section 23-420, shall issue an
 23 order affirming or modifying the abatement requirements in such citation.
 24 The rules of procedure prescribed by the commission shall provide affected
 25 employees or representatives of affected employees an opportunity to
 26 participate as parties to hearings under this subsection.

27 Sec. 3. Section 23-417, Arizona Revised Statutes, as amended by
 28 section 2 of this act, is amended to read:

29 23-417. Enforcement procedure

30 A. If the director, following an inspection or investigation,
 31 issues a citation pursuant to section 23-415 the director, within a
 32 reasonable time after termination of the inspection or investigation,
 33 shall notify the employer by mail of any penalty proposed to be assessed
 34 pursuant to section 23-418 and that the employer has fifteen working days
 35 within which to notify the director in writing if the employer wishes to
 36 contest the citation or proposed assessment of penalty. If the employer
 37 fails to notify the director in writing within fifteen working days of
 38 receipt of the notice that the employer intends to contest the citation or
 39 penalty and a notice is not filed by any employee or representative of
 40 employees pursuant to subsection D of this section within such time, the
 41 citation and the assessment, as proposed, shall be a final order of the
 42 commission and not subject to review by any court or agency, ~~except that~~
 43 ~~the director may excuse any late notification to contest a citation only~~
 44 ~~if the employer to whom the notice was sent shows by clear and convincing~~
 45 ~~evidence that the notice was not received.~~

1 B. The period allowed for correction of a violation shall not begin
2 to run until the entry of a final order in the case of any review
3 proceedings pursuant to this section initiated by the employer in good
4 faith and not solely for delay or avoidance of penalties. If the division
5 has reason to believe an employer has failed to correct a violation for
6 which a citation has been issued within the period allowed, the director
7 shall notify the employer by mail of such failure, of the penalty proposed
8 to be assessed pursuant to section 23-418 and that the employer has
9 fifteen working days within which to notify the director in writing if the
10 employer wishes to contest the notification or proposed assessment of
11 penalty. If the employer fails to notify the director in writing within
12 fifteen working days of receipt of the notice that the employer intends to
13 contest the notice or penalty, the notice and assessment, as proposed,
14 shall be deemed a final order of the commission and not subject to review
15 by any court or agency.

16 C. Any employer who corrects the violations for which a citation
17 was issued within the period allowed shall so notify the director in
18 writing.

19 D. Any affected employee or employee representative may request a
20 hearing to appeal the period allowed an employer to abate a particular
21 violation pursuant to section 23-420 if the affected employee or employee
22 representative files the appeal with the director within the abatement
23 period allowed in the citation or within fifteen days after the date of
24 receipt of the citation, whichever is shorter.

25 E. On a showing by an employer of a good faith effort to comply
26 with the abatement requirements of a citation, and that abatement has not
27 been completed because of factors beyond the reasonable control of the
28 employer, the commission or its authorized designee, after an opportunity
29 for a hearing as provided in section 23-420, shall issue an order
30 affirming or modifying the abatement requirements in such citation. The
31 rules of procedure prescribed by the commission shall provide affected
32 employees or representatives of affected employees an opportunity to
33 participate as parties to hearings under this subsection.

34 Sec. 4. Conditional enactment; notice

35 A. Section 23-417, Arizona Revised Statutes, as amended by section
36 3 of this act, becomes effective only if on or before December 31, 2021,
37 the federal occupational safety and health administration publishes in the
38 federal register pursuant to 29 Code of Federal Regulations section
39 1902.23 a final decision rendered under 29 Code of Federal Regulations
40 section 1902.22 to reject the changes to this state's occupational safety
41 and health plan prescribed in section 23-417, Arizona Revised Statutes, as
42 amended by section 2 of this act, that results in the exclusion of the
43 changes from this state's federally approved occupational safety and
44 health plan.

1 B. The director of the industrial commission of Arizona shall
2 notify in writing the director of the Arizona legislative council on or
3 before January 15, 2022 either:

4 1. Of the date on which the condition in subsection A of this
5 section was met.

6 2. That the condition was not met.

APPROVED BY THE GOVERNOR MARCH 23, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 23, 2021.