Chapter 22

NOTICE

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Chapter 22

NOTICE

Policy Statement: It is the policy of the Division of Occupational Safety and Health (DOSH), also known as Cal/OSHA or the Division, to consider issuance of a Notice in lieu of a citation when the violative condition does not have a direct relationship to employee safety or health, or when the violative condition does not have an immediate relationship to employee safety and health and the violative condition is of a general or regulatory nature.

Authority: DOSH will administer this policy in compliance with all applicable laws, rules, and guidance:

- California Labor Code, Sections 6317 and Title 8 California Code of Regulations Sections 332.1 and 334(d).

PROCEDURES:

A. USE, APPLICATION AND EXAMPLES

1. Use

   A Notice (Cal/OSHA Form 4) is an enforcement document which may be issued to an employer by the Division in lieu of a citation under the following circumstances:

   a. When a violative condition noted during the course of an inspection or investigation does not have a direct relationship to employee safety or health; or

   b. When the violative condition does not have an immediate relationship to employee safety and health and the violative condition is of a general or regulatory nature.

      EXCEPTIONS: A notice shall not be issued when the violative condition is classified as a serious, willful, repeat or failure-to-abate, or when the number of general or regulatory violations equals or exceeds ten (10).

2. Application

   In general, a Notice may be issued when the employer complies with the clear intent of the standard but deviates from its particular requirements in a manner that has no direct or immediate relationship to employee safety

or health. These deviations may involve distance specifications, construction material requirements, use of incorrect color or minor variations from testing or inspection regulations.

EXCEPTION: A Notice in lieu of a citation shall not be issued for the following types of violations: (a) posting violations with reference to the Cal/OSHA Poster, citations, special orders, and orders to take special action; (b) recordkeeping violations, except for recordkeeping violation pertaining to crane certifiers; (c) reporting violations; and (d) other violations for which a minimum civil penalty must be assessed.

3. Examples

   a. When exposure to the violative condition is not directly or immediately unsafe for employees;

      EXAMPLE: A required sign indicating the presence of high explosives, i.e., EXPLOSIVES--KEEP OFF, has letters which are slightly less than the required eight (8) inches high in height. 8 CCR §1562(g).

   b. When exposure to the violative condition is not directly or immediately unhealthy for employees;

      EXAMPLE: Flashlight is not present in a First Aid Kit at a worksite with seventeen (17) employees when one is required to be included for 16 to 200 employees. 8 CCR §1512(c)(1).

   c. When correction of the violative condition will not prevent an injury or illness;

      EXAMPLE: A standard guardrail is one-half inch less than the required vertical height range of 42 to 45 inches. 8 CCR §3209(a).

   d. When compliance with the applicable Safety Order will not improve employee safety and health but only enhance employee comfort; or

      EXAMPLE: A water closet was provided within six (6) minutes travel from the worksite instead of within the required five (5) minutes. 8 CCR §6978(a)Note.

   e. When compliance with the applicable Safety Order will not improve employee safety and health, but merely ensure the security of equipment or property.

      EXAMPLE: Conductors and equipment shall be protected from overcurrent in accordance with their ability to safely conduct current. 8 CCR §2390.1.

B. HAZARD IDENTIFICATION AND DOCUMENTATION

1. During the course of an inspection or investigation, if compliance personnel determine that a violative condition does not have a direct or immediate relationship to employee safety or health and is of a general or regulatory nature, compliance personnel may consider issuing a Notice in lieu of a citation.
2. Prior to preparing a Notice for issuance to the employer, compliance personnel shall first inform the District Manager that a violative condition has been identified for which compliance personnel wish to issue a Notice.
3. The District Manager shall then review the documentation provided by compliance personnel to verify that the violative condition is one for which a Notice is appropriate.

C. INITIAL PREPARATION

After the District Manager verifies that a Notice can be issued in lieu of a citation, compliance personnel shall prepare a draft of the Notice according to instructions found in Section I of this P&P and a Cal/OSHA Form 1B.

D. REVIEW

1. After compliance personnel prepare a draft of the Notice, the District Manager shall review the draft and approve the Notice for issuance.
2. After District Manager approval, compliance personnel shall prepare the final version of the Notice for issuance to the employer.

E. ISSUANCE

1. Office Issuance

   All Notices shall be office-issued, or given to the employer at the Closing Conference, and a copy mailed to the employer via Certified Mail--Return Receipt Requested.
2. Closing Conference
   a. If an employer, or a representative of the employer, refuses to accept the Notice, then compliance personnel shall issue a citation to the employer.
   b. Compliance personnel shall inform the employer that by accepting the Notice in lieu of a citation the employer agrees to correct the alleged violative condition within the period fixed for abatement and verify that

the violative condition has been abated by returning a Cal/OSHA Form 160 to the issuing District Office.

c. Compliance personnel shall inform the employer who has been issued a Notice that, by accepting the Notice, the employer agrees not to appeal the Notice to the Occupational Safety and Health Appeals Board.

d. Compliance personnel shall inform the employer who accepts a Notice in lieu of a citation that even though no civil penalties are imposed by the Division in conjunction with issuance of the Notice, if the violative condition is not abated within the time specified, the Division can impose civil penalties for each day that the violative condition remains unabated.

e. Compliance personnel shall inform the employer that the Notice can be used by the Division to establish a repeat violation.

F. FOLLOW-UP INSPECTIONS

Compliance personnel may conduct a follow-up inspection of all employers who are issued a Notice and fail to return a Cal/OSHA Form 160 verifying that the violative condition has been abated. Compliance personnel shall follow the criteria set forth in Chapter-14 for the performance of follow-up inspections of regulatory or general violations.

G. OFFICE PROCEDURES

1. The final version of the Notice shall be typewritten by the preparer (Office Support Staff or compliance personnel).

   NOTE: The Cal/OSHA Form 4X shall be used for the second and each succeeding page of the Notice.

2. Office Support Staff shall mail all Notices to the employer via Certified Mail--Return Receipt Requested when office-issued.

3. Office Support Staff shall data enter into IMIS all Notices from the Cal/OSHA 1B.

H. FORM DISTRIBUTION

1. Office Support Staff shall mail the original Notice to the employer via Certified Mail--Return Receipt Requested.

2. Office Support Staff shall file a copy of the Notice in the employer case file.

3. Office Support Staff shall file a copy of the Notice in the District Office's pend file to verify abatement and expedite a follow-up

inspection if necessary.

I. FORM COMPLETION

1. Type of Violation

   Enter “Notice-N.”

2. Number
   Enter "1" and number each Notice issued consecutively.

3. Issuance Date
   Enter the date that the Notice is issued.

4. Inspection Number
   Enter the preprinted nine-digit Cal/OSHA Form 1 number.

5. Reporting ID
   Enter the Region and District number.

6. SE/IH ID
   Enter the ID Number of the issuing compliance personnel.

7. Optional Report Number
   Enter the Optional Report Number.

8. Page No.
   Enter the page number, e.g., 1 of 3. Use the Cal/OSHA Form 4X for additional pages.

9. Employer Name and Address
   Enter the name and mailing address of the employer.

10. Inspection Date(s)
    Enter the date(s) the inspection was conducted.

11. Inspection Site
    Enter the address of the worksite inspected.

12. Item No.

    a. Item Number
       Enter an item number.

    b. Number of Instances
       Enter the number of instances of the item.

13. Basis of the Notice -- California Code of Regulations
    Enter the section of the California Code of Regulations which forms the basis for the Notice.

14. Description
    Describe the violative condition.

15. Abatement Date
    Enter the date fixed for compliance with the Notice.

16. Compliance Personnel and District Manager Signatures
    Enter the signature of the issuing compliance personnel and the District Manager.
17. Employer Acceptance of the Notice
    The employer, or the employer's authorized representative, enters his or her name, title, and name of place of employment subject to the Notice.
18. Authorized Signature
    Employer, or employer's authorized representative, signs and dates in the spaces provided.