

MIOSHA appeal process: What to expect after receiving a citation

Two Michigan Department of Labor and Economic Growth (DLEG) agencies can issue safety citations under Michigan's Occupational Safety and Health Act (MIOSHA): the General Industry Division and the Construction Safety Division. Employers wishing to appeal a MIOSHA citation must follow a two-step appeal procedure.

Step 1: Employer Petition

The first appeal (commonly referred to as an employer petition) is filed with whichever division issued the citation. The employer petition asks the division to reconsider the citation's merits, abatement dates or penalties. Employers must file this first-step appeal within 15 working days after the citation was served.

The division issuing the citation has 15 working days after the employer's first-step appeal to modify or affirm the original citation. Its reply is known as a decision "In Response To The Employer Petition." In almost all instances, the division merely reissues the original citation.

Absent unusual circumstances, the employer will be given an opportunity to settle a citation with a 50% reduction in penalties. To take advantage of the penalty reduction, the employer must waive all appeals and agree to the abatement dates in the citation. Once the employer files the second-step appeal, this settlement option is not available.

Step 2: Prehearing & hearing

Once the division reissues the citation, the employer has 15 working days to file its second-step appeal.

Like the first, this appeal is filed with the issuing division, which then forwards the appeal to the Board of Health and Safety Compliance and Appeals. The board assigns the matter to an administrative law judge (ALJ).

The judge then sets a prehearing conference date and a hearing date. (Both occur on the same day. If the employer attends the prehearing conference, then the hearing date will be adjourned.)

At the prehearing conference, the employer meets with a MIOSHA representative who attempts to negotiate a settlement. A representative from the division that issued the citation is also present—usually the safety inspector, and sometimes an attorney from the state attorney general's office. In some instances a settlement can be worked out at this juncture.

Failing settlement, the matter will be assigned a formal hearing date. The State Office of Administrative Hearings and Rules then assigns an ALJ to conduct the hearing.

The hearing is transcribed like any judicial proceeding. After the hearing, each party has an opportunity to file a post-hearing brief, and the ALJ makes proposed findings of fact and conclusions of law.

Both parties have an opportunity to file exceptions with the board. In most cases, the board accepts the ALJ’s proposed findings and the ALJ’s decision becomes that of the board. However, the board has the option to review the case within 30 days.

As a matter of right, employers can appeal board decisions to a state circuit court on questions of law. Circuit court decisions can be appealed to the Michigan Court of Appeals and ultimately to the Michigan Supreme Court.

Workplace posting

Employers are required to post citations and all appeal documents at a location near the place the alleged unsafe working condition existed. Employee representatives (such as a union rep) may elect to participate in any contested case with full party status.

Employers may postpone citation abatement and penalty payments during the administrative appeals period, but not once the Board of Health and Safety Compliance and Appeals had issued its final decision.

Most appeals take about one year. While some time limits are statutory, most are at the discretion of the ALJ who is hearing and administering the appeal.

Projected MIOSHA appeal timetable

Event	Time	Total Elapsed Time
Citation	Day 1	
First-step appeal	15 working days after receipt of citation	3 weeks
Division response	15 working days after first-step appeal	6 weeks
Second-step appeal	15 working days after division response	9 weeks
Appeal docketed w/board	2 months after second-step appeal	17 weeks
Prehearing conference	2 months after appeal docketed	25 weeks
Hearing before ALJ	3 months after prehearing conference	37 weeks
Post-hearing briefs filed	4 weeks after hearing	41 weeks
ALJ proposed findings	6 weeks after briefs filed	47 weeks
Decision of Board of Health and Safety Compliance and Appeals	30 days after ALJ proposed findings (unless board accepts case for review)	51 weeks
Appeal to State Circuit Court	60 days after board’s decision	