

## Don't Settle: Challenge Serious and Willful Citations

Being too willing to settle an OSHA citation can cost you in the future, experts say. According to lawyers at the law firm Jackson Lewis, if employers agree to settle a citation rather than challenge it, the Occupational Safety and Health Administration, may see it as a red flag leading to future citations for serious and willful violations or failure to abate. It's tempting to settle to save legal costs, but if there are grounds to challenge at least some alleged violations, it's worth it in the long run. <sup>1</sup>

Your staffing firm should determine that alleged safety violations are entirely valid. And because you are providing temporary employees to a client, there is the added challenge to determine who is actually at fault. Construction sites and manufacturing facilities present numerous safety challenges. Also any job site where employees will be dealing with chemicals or smelting equipment. Serious *and* Willful is more difficult to prove, but even a serious violation can reflect badly on a staffing company.

The safety of your temporary employees is the most important consideration on any job site. But if a serious injury results in a citation, have the facts on your side to challenge it. Here's how:

1. Meet with OSHA at the informal conference to determine specifically what the violations are and get a better understanding of how the standards apply. OSHA may be applying a standard incorrectly or inappropriately. Make sure your legal counsel has an explicit understanding of what the standard is, so as to determine if your employees on the job site were actually at fault.
2. Contest the citation in a timely manner. You have 15 days to contest. The clock starts ticking the first business day you receive it, according to OSHA. State programs may have different deadlines. Have your counsel draft a formal Notice of intent to Contest. You forfeit your rights if you miss the deadline.
3. Prepare for the long haul. Assuming you are challenging and not settling the citation, the process involves several steps in different locations, and can last several months. Make sure your counsel is well versed in both administrative and OSHA law. Even if you don't obtain dismissal of the citation you may be able to get some of the items dismissed.
4. Prepare all legal documents and provide witnesses. This includes proof of compliance and responsibilities. If there is some question as to who's at fault for the violation, your staffing company must provide documentation and case law establishing that it was the client who failed to follow the law.
5. Correct safety violations immediately. According to OSHA, action to mitigate the hazard must happen within the time frame on the citation. Even if you challenge, proactive mitigation may result in OSHA's reconsidering some count or counts in the citation.

<sup>1</sup>JacksonLewis, *Challenging OSHA Violations at Occupational Safety and Health Commission is Worth the Effort*, Melanie L. Paul, Kristina M. Vaquera (2023)