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## WHAT'S HAPPENING

### CAM & MIOSHA AGREE: LET'S WORK TOGETHER FOR SAFETY

The Construction Association of Michigan (CAM) and the Michigan Occupational Safety and Health Administration (MIOSHA) renewed their formal safety alliance at a ceremony on August 2, 2012. The construction industry is one of the most hazardous industries in Michigan. Only about 3.5 percent of Michigan's workforce is employed in construction, however, construction fatalities account for nearly 33 percent of all fatal workplace accidents. Alliances enable organizations committed to workplace safety and health to collaborate with MIOSHA to prevent workplace injuries and illnesses. Alliances are open to all groups, including: trade or professional associations; businesses; labor organizations; educational institutions; and government agencies. To read more on this alliance, click [here](#) for a recent edition of the Michigan Construction News.

### ADVANCED SCAFFOLDING SAFETY COURSES TO HIGHLIGHT REAL CONSEQUENCES

On October 3 & 4, 2012, the Association of General Contractors of Michigan (AGC) will be hosting two advanced scaffolding courses aimed at highlighting the real costs of noncompliance and scaffolding accidents. The courses are part of a settlement agreement between MIOSHA and Grand Traverse Construction resulting from citations issued against the company following a scaffolding accident in 2010 which claimed the life of a Grand Traverse Construction employee. The courses will include a case study of the 2010 scaffolding accident and a review of important scaffolding regulations and industry best practices. The courses are a new tool used by MIOSHA to help emphasize the real costs of noncompliance with safety and health rules to those in the industry. The courses are **free of charge**. Course information is below:

**Wednesday, October 3, 2012**

Pohlcat Golf Course  
6595 E. Airport Rd.  
Mt. Pleasant, MI

OR

**Thursday, October 4, 2012**

Okemos Conference Center  
2187 University Park Dr.  
Okemos, MI 48864

**Registration:** 7:30-8:00 a.m., **Program:** 8:00 a.m.—5:00 p.m.

For more information or to reserve your seat at one of these unique courses, please go to the AGC of Michigan website at [www.agcmichigan.org](http://www.agcmichigan.org).

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## LATE APPEALS PROCESS

Since October 1, 2011, the Appeals Division has received approximately 60 late first or second appeals of contested citations. Section 41 of the MIOASH Act outlines a strict 15 working day timeline for contesting citations following citation issuance or an issuance of decision on a first appeal. Failure to appeal within these timeframes causes the citations to become a final order. Part 13, Inspections and Investigation, Citations and Proposed Penalties sets forth the same 15 working day time limitations.

*If the Act and our rules set a strict deadline for appeals, why do we have a process which allows employers to file an appeal beyond this timeframe and reopen the citations?*

The Michigan Court of Appeals has ruled that the Board of Health and Safety Compliance and Appeals (Board) has the discretion to review a final order to determine whether it should be set aside. In 1972, the Michigan Court of Appeals ruled the Board may set aside a final order and grant a belated appeal where the employer can show two things: 1) "good cause" for having failed to meet the 15 working day deadline, and 2) that it has a meritorious defense. In instances where an employer only wishes to receive a penalty reduction and not contest the merit of the citations, the administrative law judge (ALJ) often concludes that good cause and a meritorious defense exist and the final order may be set aside so that the penalties can be reduced.

*Good cause? Meritorious defense? What do those terms mean?*

Good cause means a reason that would cause a reasonably prudent person to miss the 15 working day deadline. Good cause is not a reason which shows carelessness, negligence, or lack of reasonable diligence on the part of the employer. A meritorious defense is defined as a defense that is based on evidence sufficient to warrant setting aside the order. A meritorious defense must be based on facts, not speculation.

*What happens when an employer files late?*

If the employer is late at the first step of the process, the division will issue a decision notifying the employer that their appeal was late and the citations have become a final order. The employer may opt to either take no further action and the citations remain final or file an appeal of the decision letter which rendered the appeal late (second appeal). If the employer files a second appeal, the division transfers the late first appeal file to the Appeals Division for handling.

If the employer is timely at the first appeal but files their appeal of the decision letter late, the division transfers the late second appeal file to the Appeals Division for handling.

Once the late appeal file is received by the Appeals Division, the file is sent to the Michigan Administrative Hearing System to be assigned to an administrative law judge (ALJ). The ALJ will issue an Order to Show Cause to the employer. The Order to Show Cause requires the employer to provide to the court, in writing, both its good cause for filing the appeal late and its meritorious defenses to the citations. The employer must post the Order to Show Cause where the citation is required to be posted.

The employer has 30 calendar days from the date of the Order to Show Cause to submit its response to both the court and the Appeals Division Director. If the employer files a response to the order, the Appeals Division has 15 calendar days from the date its received the employer's response to reply in writing to the ALJ and employer.

After the employer and Appeals Division have had time to respond to the Order to Show Cause, the ALJ will issue an order ruling on the late appeal. There is no deadline for the court's ruling. If an ALJ finds the employer has shown good cause for being late and a meritorious defense to the citations, the order is called Order Finding Good Cause.

## LATE APPEALS PROCESS – continued

If the ALJ finds the employer has not met its burden, the order is called Order Dismissing Petition (late following citation issuance) or Order Dismissing Appeal (late following decision letter). If the ALJ grants a late petition/appeal, the Appeals Division will process the file through the formal appeal process in the usual fashion by scheduling a prehearing conference to review and discuss the citations.

ALJ decisions on late appeals are subject to review by the Board or state court.

## MEDIA

**August 2, 2012** – [The Construction Association of Michigan \(CAM\) and MIOSHA Renew Alliance to Protect Construction Workers](#)

**August 3, 2012** – [Commercial Tool & Die Inc. Receives SHARP Award for Workplace Safety and Health Excellence](#)

**August 7, 2012** – [Albemarle Corporation's South Haven Facility to Receive Rising Star Award for Outstanding Safety and Health Management System](#)

**August 17, 2012** – [MIOSHA and Precision Metalforming Association Renew Alliance to Protect Workers](#)

All of the MIOSHA Press Releases can be viewed from our [website](#).

## CALENDAR OF EVENTS

**September 12, 2012** – General Industry Safety Standards Commission Meeting @ 9:30 am – State Secondary Complex, General Office Building, 7150 Harris Drive, Lansing – Conference Room B

**October 17, 2012** – Occupational Health Standards Commission Meeting @ 9:30 am – State Secondary Complex, General Office Building, 7150 Harris Drive, Lansing – Conference Room B

**November 7, 2012** – Construction Safety Standards Commission Meeting @ 9:30 am – State Secondary Complex, General Office Building, 7150 Harris Drive, Lansing – Conference Room B

## QUICK LINKS

[Asbestos Program](#)

[Ask MIOSHA](#)

[CET Training Calendar](#)

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[MIOSHA News](#)

[MIOSHA Standards](#)

[MIOSHA Training Institute \(MTI\)](#)

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