

MIOSHA Fact Sheet

Late Appeals



MIOSHA has a unique two-step process to appeal citations. Step one involves an appeal to the division that issued the citations (first appeal). Step two involves an appeal of the division's first appeal decision to the Board of Health and Safety Compliance and Appeals (second, formal or board appeal).

For each of these appeal steps, Section 41 of the [Michigan Occupational Safety and Health Act](#), Act 154 of 1974, as amended (MIOSH Act), outlines a strict 15-working day timeline for the employer to mail the appeal to MIOSHA. The deadlines are:

- First Appeal: Within 15-working days of Employer's Receipt of Citations
- Second Appeal: Within 15-working days of Employer's Receipt of First Step Appeal Decision

Failure to appeal within these timeframes causes the citations and penalties originally issued to become a final order.

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 and the citations reopened for review or modification under the appeal process. Considering this, the Board has established a late appeal process for any appeal filed after the above timeframes. To have their untimely appeal of the citations considered, an employer must complete all the necessary steps of the late appeal process.

Late at First Appeal vs. Late at Second Appeal

If the employer's first appeal is late, the division that issued the citation will issue a written 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 with the Board (second appeal). If the employer files a second appeal, the division transfers the file to the Appeals Division for handling by the Board under the late appeal process.

If the employer is timely in filing their first appeal but files their second appeal late, the division automatically transfers the file to the Appeals Division for handling by the Board under the late appeal process. The employer will not be sent a notice by MIOSHA.

Late Appeal Process before the Board

The Appeals Division will forward the documents establishing that the appeal is late to the Board Clerk. The Board Clerk will independently verify the appeal is late. If the appeal is late, the file is sent to the Michigan Office of Administrative Hearings and Rules to be assigned to an Administrative Law Judge (ALJ). The ALJ is responsible for the review of all late appeals on behalf of the Board and decides whether to set aside a final order in a late appeal case.

LEO is an equal opportunity employer/program.



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The ALJ will issue an **Order to Show Good Cause Why Petition/Appeal Should Not Be Dismissed** directed to the employer with a copy to the MIOSHA Appeals Division. The employer must post the Order to Show Cause where the citation is required to be posted. The employer must also provide two things to the ALJ, in writing, in response to the Order to Show Cause: 1) “good cause” for having failed to meet the 15-working day deadline; **and** 2) a meritorious defense to the citations.

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.

Here are a few important tips on responding to the Order to Show Cause:

- **File the response within the timeframe required.** The employer has a specified number of calendar days from the date of the Order to Show Cause to submit its response to both the court and the Appeals Division Director. Failure to do so may result in a dismissal of the late appeal.
- **Respond even if it seems redundant.** Even if the appeal letters sent to MIOSHA provided a reason for missing the appeal deadline and a defense to the citations, the employer must reiterate these to the ALJ directly in response to the Order to Show Cause. Failure to do so may result in a dismissal of the late appeal.
- **Don’t forget to include good cause and a meritorious defense.** The law requires an employer to establish **both** elements to set aside the final order and reopen the citations. Many employers’ responses only address one of these, resulting in a dismissal of the late appeal.
- **Be sure to send the response as directed.** The ALJ and the MIOSHA Appeals Director must both be sent the response. Failure to do so may result in a dismissal of the late appeal. The Order to Show Cause will include instructions on who must receive the response and the appropriate addresses.
- **Advise the ALJ of the purpose of the appeal.** If a penalty reduction is all that is desired, include that information in the response. The ALJ may grant the late appeal and set aside the final order if it is for the sole purpose of obtaining a penalty reduction, not appeal of the underlying citation.

Once the employer responds to the Order to Show Cause, the MIOSHA Appeals Division may file a reply to the employer’s asserted good cause and meritorious defense. The division has a set number of calendar days from when the employer’s response was received to forward its reply to the ALJ and the employer.

After the timeframe for both the employer and MIOSHA to respond has passed, the ALJ will issue an Order ruling on the late appeal. An Order Dismissing Petition/Appeal means that the citations and penalties originally issued are to remain final. An Order Finding Good Cause means that the citations are to be reopened. If the citations are reopened, the Board will process the appeal in the usual fashion by scheduling a prehearing conference for the parties to review and discuss the citations. For more information on the prehearing conference, please see the [Prehearing Conference Fact Sheet](#).