

Michigan Department of Labor and Economic Opportunity
Michigan Occupational Safety and Health Administration (MIOSHA)

MIOSHA Construction Safety & Health Division
530 West Allegan Street
P.O. Box 30645
Lansing, MI 48909
Phone: (517) 284-7680 Fax: (517) 284-7685



Citation and Notification of Penalty

To:

Brandon Martinez
and its successors
721 Lafayette Street, SW
Grand Rapids, MI 49507

Inspection Number: 1485278
Inspection Date(s): 07/24/2020 - 07/24/2020
Issuance Date: 09/08/2020

Inspection Site:

441 Allegan Street
Plainwell, MI 49080

Reporting ID: 0552651
CSHO ID: 18694
Optional Report Number: 20-059/10

SUMMARY: An inspection at the site noted above has revealed conditions we believe do not comply with the provisions of the Michigan Occupational Safety and Health Act, Act 154, of the P.A. of 1974, as amended (MIOSH Act). The nature of such alleged violation(s) is described on the citation(s) with reference to the applicable standards, rules, regulations, orders and provisions of the Act. Following is a list of items the employer must consider carefully, to resolve the issues alleged in the citation(s). Following this numbered summary is a more detailed explanation of the requirements.

1. The violation(s) alleged in the citation(s) must be corrected on or before the date(s) shown in the line marked "Date By Which Violation Must Be Abated". If the line is marked "Immediately Upon Receipt," the violation must be corrected on or before the date that the citation is received by the employer. If the violation was corrected during the inspection, the line will be marked "Abated." or "Corrected during inspection." Correcting a violation does not eliminate the requirement to pay the penalty nor does payment of the penalty negate having to correct the violation.
2. A copy of the citation(s) must be posted at or near the location of the violation(s) for a minimum of 3 days or until the item(s) have been corrected, whichever is later.
3. Documentation of abatement must be provided to the issuing division. Failure to provide such documentation may result in a follow-up inspection.
4. The employer may enter into a Penalty Reduction Agreement (PRA) that can result in a 50% reduction in any assessed penalties. The employer should apply for a PRA online at www.michigan.gov/mioshapra within 5 workdays upon receiving a citation(s) if interested. An employer without access to a computer may contact the issuing division to request a PRA.
5. The employer may file a first appeal for modification or dismissal of a citation item and/or any proposed penalty or request an extension of time for abatement. **The appeal must be in writing and be postmarked within 15 workdays of receipt (workday is defined below).** The first appeal can also result in a penalty reduction of up to 50%. If an appeal is untimely, the citation(s) become a Final Order of the Board of Health and Safety Compliance and Appeals (Board) and is no longer subject to review by the issuing division. An employee or employee representative may appeal abatement dates.
6. Except under a PRA monetary penalties must be paid within 15 workdays of a citation becoming a Final Order of the Board.
7. The employer may file a request for an extension of time to abate a citation(s) that has become a Final Order of the Board. Such a request must be in writing and received or post marked no later than 1 working day following the abatement date.
8. It is unlawful to discriminate against an employee for exercising any of their rights under MIOSHA.

Note: As defined in statutes, “workday” or “working day” means any day other than a Saturday, Sunday, or state legal holiday. The state legal holidays are:

January 1, New Year’s Day
The third Monday in January, Martin Luther King, Jr. Day
February 12, Lincoln’s birthday
The third Monday of February, Washington’s birthday
The last Monday of May, Memorial or Decoration Day
July 4, Independence Day
The first Monday in September, Labor Day
The second Monday in October, Columbus Day
November 11, Veterans’ Day
The fourth Thursday of November, Thanksgiving Day
December 25, Christmas Day

Please note whenever January 1; February 12; July 4; November 11; or December 25 fall on a Sunday, the next Monday following is deemed a public holiday (non-working day) for appeal purposes. However, there is no compensating day when one of the five dated holidays falls on a Saturday. Also, when computing the 15 working days, you do not count the date on which it is received; you start with the next working day. Additionally, the count is based on when the citation was received at the employer’s location, not when it got to any particular person or office at the employer’s location.

I–CITATIONS: The nature of the alleged violation(s) is described on the enclosed citation(s). These conditions must be corrected on or before the date(s) shown in the line marked “Date By Which Violation Must Be Abated.” The issuing division may be contacted by telephone at the number indicated on the front of the citation for the purpose of discussing any issues related to the inspection or citation(s).

A copy of the citation(s) must be posted at or near the location of the violation for a minimum of 3 days or until the items have been corrected, whichever is later. The MIOSH Act provides for civil penalties of up to \$7,000 for each violation for failure to comply with posting requirements.

When compliance is achieved, a copy of the citation must be signed and returned to the issuing division along with documentation of abatement.

Documentation of abatement for citation items originally classified as “serious,” “repeat,” “fail-to-abate,” “willful,” or “instance-by-instance,” require documentation as deemed appropriate by the issuing division. Examples of documentation for these violation classifications are:

- (a) A detailed description of how the violation was abated.
- (b) Work orders or an invoice indicating the corrective work that has been done.
- (c) Photographs of the abated conditions.
- (d) Other forms of conclusive evidence that your employees are no longer exposed to the hazard.

For citation items classified as “other,” submitting to the issuing division a signed copy of the citation item indicating the item has been abated is acceptable documentation of abatement. Submitting a document in writing, certifying abatement of the particular citation item is also acceptable for citation items classified as “other.”

If the employer does not provide adequate documentation of abatement, a re-inspection may be conducted. Failure to correct an alleged violation within the abatement period may result in new or additional proposed penalties.

Correcting a violation prior to the expiration of the abatement date does not eliminate the requirement to pay the penalty. Payment of the penalty does not eliminate the requirement of correcting the violation.

II–PENALTY REDUCTION: In addition to the appeal rights afforded by the MIOSH Act, the Michigan Occupational Safety and Health Administration has implemented a program for negotiating an expedited settlement of penalties with the employers known as a Penalty Reduction Agreement (PRA). This is a program designed to reach abatement of the hazard at the earliest possible opportunity and reduce the need for formal appeals. The penalty reduction (PRA) can result in a penalty reduction of 50% provided the issuing division and the employer agree to a number of specified conditions. These conditions include an agreement by the employer to accept all of the citations issued and to:

- (a) Not appeal further.
- (b) Abate all items within the abatement period.
- (c) Provide proof of abatement.
- (d) Pay all agreed upon penalties as required (within 15 working days of approval of the PRA.)
- (e) Abide by any other mutually agreed upon actions.

Inspections involving a fatality, the Severe Violator Enforcement Program (SVEP), or willful citations are not eligible for the program. Construction citations must be confirmed as corrected by the issuing division before a penalty reduction agreement can be approved.

If you are interested in pursuing a PRA, you should apply online at www.michigan.gov/mioshapra **within 5 workdays upon receipt of the citation(s)**, but no later than the 15th workday beyond receipt of the citation(s). If you do not have access to a computer, you should contact the issuing division within the same timeframe to request a PRA. If the employer wishes to accept the conditions stated above and the process can be completed within 15 workdays from receipt, then no appeal need be filed.

III–CITATION APPEAL: An employer may file a first appeal to the issuing division in writing for modification or dismissal of a citation item and/or any proposed penalty or an extension of time for abatement. The first appeal can also result in a penalty reduction of up to 50% providing the issuing division and the employer agree to the conditions (a) through (e) as stated in Section II, PENALTY REDUCTION (above).

An employee or employee representative may appeal in writing the reasonableness of the abatement date(s). The envelope containing an appeal must be postmarked no later than the 15th workday following receipt of the citation.

If a citation is not appealed within 15 workdays of receipt, then the citation becomes a Final Order of the Board of Health and Safety Compliance and Appeals (Board). Final Order citations are not subject to review by the issuing division unless the Bureau of Hearings establishes good cause for the late appeal.

An appeal must specify the item(s) appealed and that portion of the item (e.g., violation, abatement date, penalty) which is being appealed and include a certification that the appeal has been posted or given to affected employees or their representatives. If the issuing division meets with the employer to discuss an appeal, the issuing division will notify the employee representative and allow attendance at the meeting.

The issuing division will notify an employer of its decision within 15 workdays of the receipt of the employer's written appeal. The decision must be posted at the location of the subject citation.

If an employer, employee or employee representative is not satisfied with this decision then they may file a second appeal. The appeal must be in writing and the envelope containing the second appeal must be postmarked within 15 workdays of the receipt of the issuing division's decision on the first appeal. If the issuing division's decision is not appealed then the citation becomes a Final Order of the Board.

IV–PAYMENT OF MONETARY PENALTIES: Unless subject to a PRA, payment must be made within 15 workdays of the date a proposed penalty of a citation becomes a Final Order of the Board. This would be the 30th workday after receipt of each citation item that is not appealed. For payment of a penalty, make a check or money order payable to the "State of Michigan" and remit to the issuing division at the address shown on the citation. Please record the inspection number, citation and item number on the check, money order or transmittal letter.

V–EXTENSION OF TIME TO ABATE: An employer may file a petition for modification of abatement date(s) (PMA) on an item of a citation, which has become a Final Order of the Board. The PMA must be submitted to the issuing division in writing by personal delivery or postmarked no later than one day following the abatement date, and a copy posted near the place the citation was posted. An employer must have made a good faith effort to correct the violation by the abatement date, and has or will not be successful because of factors beyond the employer's reasonable control. A PMA must include:

- (a) Steps taken to achieve compliance.
- (b) The specific additional abatement time necessary.
- (c) The reasons the additional time is needed.
- (d) Available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
- (e) A certification that a copy of the PMA has been posted for employees at the location of the subject citation.

The posted copy must remain posted for a minimum of 10 workdays.

If the issuing division or affected employees file an objection to the PMA within 10 workdays of the employer's filing date, the Board will schedule a hearing and advise the employer of the date, time, and place of the hearing.

VI–EMPLOYEE DISCRIMINATION: Section 65 of the MIOSH Act, prohibits discrimination by an employer against an employee for filing a complaint or exercising any rights under the MIOSH Act, as amended. If an employee believes that he or she was discharged or otherwise discriminated against as a result of filing a complaint, they may file a complaint with the MIOSHA Employee Discrimination Section within 30 days after the violation occurs.

VII-STATE CONSULTATION EDUCATION AND TRAINING SERVICES: The MIOSHA Consultation Education and Training (CET) Division offers a wide range of services to help businesses with their health and safety practices. CET services include: helping employers create a Safety and Health Management System, seminars and workshops, onsite consultations, hazard surveys, an equipment loan program and information material. The majority of CET services are provided free of charge to Michigan employers and employees. For information on these services, contact the CET Division at (517) 284-7720 or visit their web site at www.mi.gov/miosha.

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Inspection Date(s): 07/24/2020 - 07/24/2020

Issuance Date: 09/08/2020

Optional Reporting Number: 20-059/10

Citation and Notification of Penalty

Company Name: Brandon Martinez

Inspection Site: 441 Allegan Street, Plainwell, MI 49080

Citation 1 Item 1

Type of Violation: **Serious**

408.1011(a): ACT 154 MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ACT

An employer shall furnish to each employee, employment and a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.

The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees, in that employees were not protected from the hazard of contracting the virus, SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), the cause of coronavirus disease 2019 (COVID-19):

- a. Employees were performing residential roofing activities in Plainwell, MI on July 24, 2020, where employer allowed workers within six feet of one another when it was feasible to have them work more than six feet apart, thus potentially exposing employees to SARS-CoV-2 virus.
- b. Employees were performing residential roofing activities in Plainwell, MI on July 24, 2020, where employer did not require workers to wear non-medical grade face coverings when they did not consistently maintain six feet of separation, thus potentially exposing employees to SARS-CoV-2 virus.
- c. On July 24, 2020, the employer had not developed a COVID-19 preparedness and response plan, which would have included requirements for social distancing and use of face coverings.
- d. On July 24, 2020, the employer had not conducted employee training on COVID-19 that covered social distancing and the use of face coverings.

Among other methods, a feasible abatement method to correct this hazard is to:

- a. Keep everyone on the worksite premises at least six feet from one another to the maximum extent possible, including through the use of ground markings, signs, and physical barriers, as appropriate to the worksite.
- b. Require face coverings to be worn when employees cannot consistently maintain six feet of separation from other individuals in the workplace.
- c. Develop a COVID-19 preparedness and response plan, consistent with the recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Safety and Health Administration. Make the plan readily available to employees, whether via website, internal network, or by hard copy.
- d. Provide COVID-19 training to employees the covers, at a minimum: workplace infection-control practices; and the proper use of personal protective equipment.

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Company Name: Brandon Martinez

Inspection Site: 441 Allegan Street, Plainwell, MI 49080

Date By Which Violation Must be Abated:

September 14, 2020

Proposed Penalty:

\$2,100.00

Citation 1 Item 2

Type of Violation: **Serious**

1926.100(a): CS Part 6 Personal Protective Equipment

Employees working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns, shall be protected by protective helmets.

Worker on ground level, directly below employees working on a residential roof, not wearing a hard hat while performing clean up duties.

Date By Which Violation Must be Abated:

Corrected During Inspection

Proposed Penalty:

\$1,000.00

Citation 1 Item 3a

Type of Violation: **Serious**

408.41124(1): CS Part 11 Fixed and Portable Ladders

A portable ladder shall be used at such a pitch that the horizontal projected distance from the top support to the base is not more than 1/4 of the vertical distance between these points.

Workers used a "Little Giant" type aluminum extension ladder at the West Side of jobsite on the day prior to the

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inspection to work on the eave part of the Northwest side of the roof area. The ladder was set up more than 1/4 distance from the top support to the base.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$500.00

Citation 1 Item 3b

Type of Violation: **Serious**

408.41124(7): CS Part 11 Fixed and Portable Ladders

A metal ladder shall not be used or moved unless a minimum of 20 feet is maintained between power transmission or distribution lines.

Workers used a "Little Giant" type aluminum extension ladder at the West Side of jobsite on the day prior to the inspection to work on the eave part of the Northwest side of the roof area. The ladder was less than 20 feet away from an energized service entrance conductor.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$0.00

Citation 1 Item 4

Type of Violation: **Serious**

408.41124(5): CS Part 11 Fixed and Portable Ladders

When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend not less than 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to rigid support that will not deflect and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. The side rails shall not extend in a manner that would permit ladder deflection under a load, by itself, to cause the ladder to slip off its support. The top of a non-self-supporting ladder shall be

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placed with the 2 rails supported equally, unless the ladder is equipped with a single support attachment.

Workers used a "Little Giant" type aluminum extension ladder at the jobsite to gain access to and from the pitch roof area, the ladder was not three feet past the point of access or secured at the top.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$1,000.00

Citation 1 Item 5

Type of Violation: **Serious**

408.41937(4): CS Part 19 Tools

The operator of a portable powered stapler or nailer and those employees within the striking distance of its fastener shall wear eye protection provided for and as prescribed in rules 617, 623, and 624 of Part 6. Personal Protective Equipment, being R 408.40617, R 408.40623, and R 408.40624 of the Michigan Administrative Code.

Four employees working on jobsite roof were subjected to flying projectiles striking head and face area while using portable air nail guns without the use of safety glasses.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$800.00

Citation 1 Item 6

Type of Violation: **Serious**

1926.501(b)(13): CS Part 45 Fall Protection REF 408.44502

Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be

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protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of 1926.502.

Four employees working on a job site roof were subjected to a fall more than 6 feet to the ground, not utilizing fall protection measures.

Date By Which Violation Must be Abated: **Corrected During Inspection**
Proposed Penalty: **\$2,100.00**

Citation 2 Item 1

Type of Violation: **Other-than-Serious**

408.40114(1): CS Part 1 General Rules

An employer shall develop, maintain, and coordinate with employees an accident prevention program, a copy of which shall be available at the worksite.

Five employees working on a single family residential jobsite; no accident prevention program developed.

Date By Which Violation Must be Abated: **September 14, 2020**
Proposed Penalty: **\$0.00**

Citation 2 Item 2

Type of Violation: **Other-than-Serious**

408.40132(3): CS Part 1 General Rules

A person who has a valid certificate in first aid training shall be present at the worksite to render first aid. A

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certificate is valid if the requirements necessary to obtain the certificate for first aid training meet or exceed the requirements of the United States bureau of mines, the American red cross, the guidelines for basic first aid training programs, or equivalent training.

Five employees working on a single family residential jobsite; no first aid card available at the jobsite.

Date By Which Violation Must be Abated:

September 14, 2020

Proposed Penalty:

\$0.00

Authorized Signature

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CSHO ID: I8694

PROPOSED PENALTY INVOICE

Company Name: Brandon Martinez
Inspection Site: 441 Allegan Street
Plainwell, MI 49080

Summary of Penalties for Inspection Number: 1485278

Citation 1 Item 1, Serious	\$2,100.00
Citation 1 Item 2, Serious	\$1,000.00
Citation 1 Item 3a, Serious	\$500.00
Citation 1 Item 3b, Serious	\$0.00
Citation 1 Item 4, Serious	\$1,000.00
Citation 1 Item 5, Serious	\$800.00
Citation 1 Item 6, Serious	\$2,100.00
Citation 2 Item 1, Other-than-Serious	\$0.00
Citation 2 Item 2, Other-than-Serious	\$0.00

TOTAL PROPOSED PENALTIES: **\$7,500.00**

Correcting a violation prior to the expiration of the abatement date does not eliminate the requirement to pay the penalty.
Payment of the penalty does not eliminate the requirement of correcting the violation.

The state does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Payment must be made within 15 working days of the date a proposed penalty of a citation item becomes a final order of the board. This would be the thirtieth (30th) working day after receipt of each citation item which is not appealed. For the payment of any penalty, make a check or money order payable to the "State of Michigan" and remit to the Department of Labor and Economic Opportunity at the address shown on the citation. **PLEASE RECORD THE APPLICABLE INSPECTION NUMBER, CITATION NUMBER(S) AND ITEM NUMBER(S) ON THE CHECK, MONEY ORDER OR YOUR TRANSMITTAL LETTER.**

Enclose this invoice page (or a copy thereof) with your payment.

Authorized Signature