



ADMINISTRATIVE INITIATIVE

STATE OF HAWAII DEPARTMENT OF LABOR & INDUSTRIAL RELATIONS HAWAII OCCUPATIONAL SAFETY AND HEALTH STANDARDS

**TITLE: NOTICE OF VIOLATIONS AND
DE MINIMUS VIOLATIONS**

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**DIVISION(S)/AGENCY(S): HAWAII OCCUPATIONAL
SAFETY AND HEALTH**

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ADMINISTRATIVE INITIATIVE DISCLAIMER

This Administrative Initiative is designed to provide general information in regard to current initiatives, opinions, policies, and/or guidelines of the Hawaii Department of Labor and Industrial Relations. It is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable in all situations. This Administrative Initiative does not replace applicable Hawaii Revised Statutes or Hawaii Administrative Rules. If additional clarification is required, the applicable division or agency administrator should be consulted.

A. Purpose and Goal

The purpose of this Administrative Initiative is to explain the Hawaii Occupational Safety and Health Division (HIOSH) of the Department of Labor and Industrial Relations' (DLIR) Notice of Violation and *De Minimis* policy, which provides employers the opportunity to correct certain other-than-serious hazards in lieu of receiving a citation. This policy was approved by the federal Occupational Safety and Health Administration (OSHA) and initially implemented on November 1, 2003.

The purpose of this policy under Chapter 396, Hawaii Revised Statutes, is to:

1. Increase consultation visits. As more employers come to trust that HIOSH will be more helpful and less punitive, we expect more employers will be requesting consultations.
2. Increase inspections. This policy will reduce the amount of inspection paperwork and computer data entry tasks. It will expedite inspections, allowing HIOSH to increase the number of inspections.

3. Increase in the number of serious hazards abated. By focusing less attention on the other-than-serious hazards, the compliance officers will focus on the citation and abatement of serious violations.

B. Summary of Policy

Inspectors will not issue citations for other-than-serious violations for which the employer has either corrected during the inspection or within two (2) weeks of the inspection. Other-than-serious violations that are corrected during the inspection will be considered *De Minimis*. Where the employer agrees to correct the other-than-serious hazard within two (2) weeks, a Notice of Violation (NOV) in lieu of a Citation and Notification of Penalty will be given to the employer in the field.

By rewarding employers who promptly correct other-than-serious violations, HIOSH is establishing a more cooperative and less punitive relationship with employers, who in time, will be seeking HIOSH's assistance rather than resisting or avoiding any contact with HIOSH. More consultation requests and visits are expected.

With less paperwork burden for other-than-serious violations, the compliance officer will be able to provide more attention to serious hazards in the workplace. The compliance officer will be able to work more with the employer in providing better quality abatement recommendations, and provide better oversight in ensuring that the serious hazard has been corrected.

C. Notice of Violation

A Notice of Violation (NOV) may be issued for other-than-serious violations with no penalty; i.e. minimal severity and lesser probability, that are not corrected prior to the closing conference, but the employer agrees to abate the violation within two (2) weeks of the closing conference.

The option to accept an NOV versus a citation is at the discretion of the employer. The Occupational Safety and Health Compliance Officer/Environmental Health Specialist (OSHCO/EHS) shall present the choice of an NOV or citation to the employer. In offering the option to have an NOV rather than a citation, the OSHCO/EHS must:

1. Establish that the person is the top management official at the site or establishment with the authority to speak and act for the employer with regards to a HIOSH inspection.
2. Ensure that the employer understands that in signing the NOV, they are waiving their rights to contest any item on the NOV.
3. Ensure that the employer will abate all the items within the two-week period following the closing conference and understands the requirement to submit the abatement letter upon abatement.

4. Ensure that the employer understands the need to submit a Petition to Modify Abatement (PMA) should the need arise.
5. Inform the employer that the items on the NOV can be used to cite repeat or willful violations in the future.
6. Inform the employer that items on the NOV are subject to review and that upon return to the office, the employer's history for the past three years will be checked, and if a prior violation is found, a supplemental telephone closing conference will be conducted. Also, if a repeat citation is issued, the normal contest rights for the employer are applicable.
7. The NOV must be posted at the jobsite for a minimum of three (3) days or until all the items have been abated, whichever is longer.
8. Clearly explain to the employer that the NOV will only be issued for items that are considered other-than-serious with no penalty, minimal severity and lesser probability and the employer agrees to have abated within 2 weeks of the closing conference. Any other violations found that do not qualify for De Minimis (as explained below) or NOV will be issued as a citation.
9. Reiterate that the acceptance of an NOV over a citation is the employer's choice.

D. *De Minimis* Violation

A *De Minimus* violation is an other-than-serious violation with no penalty; i.e. minimal severity and lesser probability, that is corrected onsite prior to the closing conference. In order for a violation to be considered corrected onsite, it must be corrected in accordance with §12-51-22(d)(2).

The violation will be written on the OSHA 1B documenting the abatement action taken. The OSHA 1B will then be marked with a diagonal line across the form and "De Minimis" written above the diagonal line and placed in the back of the case file and not entered into the Integrated Management Information System (IMIS).

The Focused Inspection Policies for Construction and General Industry and the Paper Work Citation Policy remain in effect.

1. Procedures

- a. The OSHCO/EHS ensures at the opening conference the management representative has the authority to speak and act for the management of the company. If not, requests the presence of such management official, and waits a maximum of one (1) hour for their arrival, as per Field Operations Manual (FOM).

- b. The OSCHO/EHS explains the Notice of Violation and *De Minimis* Violation policy briefly during opening conference. Provides “Employer Bill of Rights” handout. The OSHCO/EHS must also mention that all violations are subject to management review and may be reclassified.
- c. During the walk around, identifies all potential hazards and documents all potential hazards in the same way and extent as it is currently. Continues to encourage immediate or prompt abatement for each identified hazard. Immediate correction is documented noting how abatement was achieved. To qualify as corrected onsite, abatement must not be temporary, (*e.g.* placing a caution sign in front of wet or ice slippery floor instead of cleaning it up; putting up barriers to the mezzanine level and under the mezzanine level with no load limit sign when you know employees need to access the areas, etc.) (This abatement standard is not a change in procedure.)
- d. OSHCO/EHS must make the hazard classification determination in the field.
- e. If other-than-serious hazard is corrected onsite (see item 3. above), i.e. before the closing conference, then the hazard is written on the OSHA 1B form, abatement action is documented, a diagonal line is drawn through the OSHA 1B and “De Minimis” is noted just above diagonal line.
- f. If an other-than-serious hazard is not corrected onsite, but can be corrected within the next two (2) weeks and the employer agrees to the correction date, an NOV is offered in lieu of a regular Citation and Notification of Penalty. All items will have the same abatement date.
- g. If the employer/management representative chooses to accept an NOV, the NOV form (carbonless 2 sheets) is completed during the closing conference, and the employer/management representative's signature is obtained on the NOV form. The original is given to employer/management representative for posting, and the OSHCO/EHS retains the carbon copy.
- h. If the employee representative requests a copy of the NOV form, a copy will be mailed to the employee representative.
- i. Field notes will add information that the employer received an NOV for the item (suggest drawing a block around hazard documentation with “Warning Letter” written in top right corner).
- j. Upon return to the office, OSHCO/EHS will check establishment history for potential repeats. If a repeat is found, OSHCO/EHS will verify with the supervisor that the item is “substantially similar” to the prior citation item, notify employer by telephone that the NOV for that item is considered rescinded or void, that a “repeat” citation will be issued, and the employer retains their contest right for that item. If no repeat violations are found, the OSHCO/EHS will prepare OSHA 1Bs (citation

worksheet) in the Compliance Safety and Health Officer (CSHO) application as usual, except that NOV items will only include citation number, item, standard violated, and the abatement date (within two (2) weeks).

- k. If only the OSHA 1-B is prepared for *De Minimis* items, the OSHCO/EHS will process as if no violations were found, entering "close case" (since abatement is already verified and no penalty payment is pending), saving Oracle file to public file for supervisor acknowledgement and transfer to National Cash Register (NCR).
- l. If only NOV items are issued, following entry into the Oracle CSHO application, the file is saved to the public file for supervisor acknowledgement and transfer to NCR.
- m. If a combination of NOV and regular citations are issued, the OSHCO/EHS will process the NOV items first as indicated above, so that abatement can be tracked in the NCR. Regular citation items beginning with Citation 2, will be processed as usual, except that the supervisor must notify the Clerical Services Unit (CSU) that citation 1 (NOV items) is to be suppressed when printing the Citation and Notification of Penalty.
- n. The NOV is to be treated as a regular citation for State of Hawaii Office of Information Practices (OIP) purposes, so a copy can be made for the library reading file. NOVs are filed in the case file along with any Citations or where the Citations would have been filed.
- o. If employer contests other items, a copy of the NOV is included in the file and a copy of the file is transmitted to the Attorney General, since they have requested that the entire file be sent to them for case preparation.
- p. If the employer contests the NOV, the Branch Manager will send a letter to the employer explaining that when they signed the NOV, they waived their right to contest all the items on the NOV, therefore, we cannot accept their notification of intent to contest. A copy of the NOV shall be included as an attachment, and the right to file a Complaint Against State Program Administrator (CASPA) will be explained in the letter.
- q. Repeated violations as a result of an NOV. If a subsequent inspection finds a hazard that was "substantially similar" to an NOV item, normal processing for repeat citation with the exception that the date the NOV was signed by the employer or management representative shall be the "final order date." The repeat citation shall include a copy of the original NOV.

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