

SHB 1676 - H AMD 365

By Representative Reykdal

ADOPTED 03/05/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 49.17.140 and 1994 c 61 s 1 are each amended to read
4 as follows:

5 (1) If after an inspection or investigation the director or the
6 director's authorized representative issues a citation under the
7 authority of RCW 49.17.120 or 49.17.130, the department, within a
8 reasonable time after the termination of such inspection or
9 investigation, shall notify the employer by certified mail of the
10 penalty to be assessed under the authority of RCW 49.17.180 and shall
11 state that the employer has fifteen working days within which to notify
12 the director that the employer wishes to appeal the citation or
13 assessment of penalty. If, within fifteen working days from the
14 communication of the notice issued by the director the employer fails
15 to notify the director that the employer intends to appeal the citation
16 or assessment penalty, and no notice is filed by any employee or
17 representative of employees under subsection (3) of this section within
18 such time, the citation and the assessment shall be deemed a final
19 order of the department and not subject to review by any court or
20 agency.

21 (2) If the director has reason to believe that an employer has
22 failed to correct a violation for which ~~((a citation has been issued
23 within the period permitted in the citation for its correction, which
24 period shall not begin to run until the entry of a final order in the
25 case of any appeal proceedings under this section initiated by the
26 employer in good faith and not solely for delay or avoidance of
27 penalties))~~ the employer was previously cited and which has become a
28 final order, the director shall notify the employer by certified mail
29 of such failure to correct the violation and of the penalty to be
30 assessed under RCW 49.17.180 by reason of such failure, and shall state

1 that the employer has fifteen working days from the communication of
2 such notification and assessment of penalty to notify the director that
3 the employer wishes to appeal the director's notification of the
4 assessment of penalty. If, within fifteen working days from the
5 receipt of notification issued by the director the employer fails to
6 notify the director that the employer intends to appeal the
7 notification of assessment of penalty, the notification and assessment
8 of penalty shall be deemed a final order of the department and not
9 subject to review by any court or agency.

10 (3) If any employer notifies the director that the employer intends
11 to appeal the citation issued under either RCW 49.17.120 or 49.17.130
12 or notification of the assessment of a penalty issued under subsections
13 (1) or (2) of this section, or if, within fifteen working days from the
14 issuance of a citation under either RCW 49.17.120 or 49.17.130 any
15 employee or representative of employees files a notice with the
16 director alleging that the period of time fixed in the citation for the
17 abatement of the violation is unreasonable, the director may reassume
18 jurisdiction over the entire matter, or any portion thereof upon which
19 notice of intention to appeal has been filed with the director pursuant
20 to this subsection. If the director reassumes jurisdiction of all or
21 any portion of the matter upon which notice of appeal has been filed
22 with the director, any redetermination shall be completed and
23 corrective notices of assessment of penalty, citations, or revised
24 periods of abatement completed within a period of thirty working days.
25 The thirty-working-day redetermination period may be extended up to
26 fifteen additional working days upon agreement of all parties to the
27 appeal. The redetermination shall then become final subject to direct
28 appeal to the board of industrial insurance appeals within fifteen
29 working days of such redetermination with service of notice of appeal
30 upon the director. In the event that the director does not reassume
31 jurisdiction as provided in this subsection, the director shall
32 promptly notify the state board of industrial insurance appeals of all
33 notifications of intention to appeal any such citations, any such
34 notices of assessment of penalty and any employee or representative of
35 employees notice of intention to appeal the period of time fixed for
36 abatement of a violation and in addition certify a full copy of the
37 record in such appeal matters to the board. The director shall adopt
38 rules of procedure for the reassumption of jurisdiction under this

1 subsection affording employers, employees, and employee representatives
2 notice of the reassumption of jurisdiction by the director, and an
3 opportunity to object or support the reassumption of jurisdiction,
4 either in writing or orally at an informal conference to be held prior
5 to the expiration of the redetermination period. Except as otherwise
6 provided under subsection (4) of this section, a notice of appeal filed
7 under this section shall stay the effectiveness of any citation or
8 notice of the assessment of a penalty pending review by the board of
9 industrial insurance appeals, but such appeal shall not stay the
10 effectiveness of any order of immediate restraint issued by the
11 director under the authority of RCW 49.17.130. The board of industrial
12 insurance appeals shall afford an opportunity for a hearing in the case
13 of each such appellant and the department shall be represented in such
14 hearing by the attorney general and the board shall in addition provide
15 affected employees or authorized representatives of affected employees
16 an opportunity to participate as parties to hearings under this
17 subsection. The board shall thereafter make disposition of the issues
18 in accordance with procedures relative to contested cases appealed to
19 the state board of industrial insurance appeals.

20 Upon application by an employer showing that a good faith effort to
21 comply with the abatement requirements of a citation has been made and
22 that the abatement has not been completed because of factors beyond the
23 employer's control, the director after affording an opportunity for a
24 hearing shall issue an order affirming or modifying the abatement
25 requirements in such citation.

26 (4) An appeal of any violation classified and cited as serious,
27 willful, repeated serious violation, or failure to abate a serious
28 violation does not stay abatement dates and requirements except as
29 follows:

30 (a) An employer may request a stay of abatement for any serious,
31 willful, repeated serious violation, or failure to abate a serious
32 violation in a notice of appeal under subsection (3) of this section;

33 (b) When the director reassumes jurisdiction of an appeal under
34 subsection (3) of this section, it will include the stay of abatement
35 request. The issued redetermination decision will include a decision
36 on the stay of abatement request. The department shall stay the
37 abatement for any serious, willful, repeated serious violation, or
38 failure to abate a serious violation where the department cannot

1 determine that the preliminary evidence shows a substantial probability
2 of death or serious physical harm to workers. The decision on stay of
3 abatement will be final unless the employer renews the request for a
4 stay of abatement in any direct appeal of the redetermination to the
5 board of industrial insurance appeals under subsection (3) of this
6 section;

7 (c) The board of industrial insurance appeals shall adopt rules
8 necessary for conducting an expedited review on any stay of abatement
9 requests identified in the employer's notice of appeal, and shall issue
10 a final decision within forty-five working days of the board's notice
11 of filing of appeal. This rule making shall be initiated in 2011;

12 (d) Affected employees or their representatives must be afforded an
13 opportunity to participate as parties in an expedited review for stay
14 of abatement;

15 (e) The board shall grant a stay of an abatement for a serious,
16 willful, repeated serious violation, or failure to abate a serious
17 violation where there is good cause for a stay unless based on the
18 preliminary evidence it is more likely than not that a stay would
19 result in death or serious physical harm to a worker;

20 (f) As long as a motion to stay abatement is pending all abatement
21 requirements will be stayed.

22 (5) When the board of industrial insurance appeals denies a stay of
23 abatement and abatement is required while the appeal is adjudicated,
24 the abatement process must be the same process as the process required
25 for abatement upon a final order.

26 (6) The department shall develop rules necessary to implement
27 subsections (4) and (5) of this section. In an application for a stay
28 of abatement, the department will not grant a stay when it can
29 determine that the preliminary evidence shows a substantial probability
30 of death or serious physical harm to workers. The board will not grant
31 a stay where based on the preliminary evidence it is more likely than
32 not that a stay would result in death or serious physical harm to a
33 worker. This rule making shall be initiated in 2011."

34 Correct the title.

EFFECT: (1) Provides that the Department of Labor and Industries

(Department) will not stay an abatement where the Department can determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. Provides that the Board of Industrial Insurance Appeals (Board) must grant a stay where there is good cause but will not grant a stay where based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker.

(2) Deletes the provision for employer reimbursement if the underlying violation is vacated and a finding of fact is made that no hazard exists, and the requirements regarding abatement plans if the Board denies a stay.

(3) Provides that as long as a motion to stay is pending all abatement requirements are stayed.

--- END ---