

# Cal-OSHA Amendments to Abatement Requirements Effective as of January 1, 2015

By Tressi L. Cordaro on February 2, 2015

Starting January 1, 2015, the process for abatement of California OSHA (“Cal-OSHA”) citations changed. In short, the new law, A.B. 1634, signed by California Governor Jerry Brown in September 2014, prohibits Cal-OSHA (“the Division”) from making penalty modifications to citations unless the alleged violation has been abated and requires employers to abate citations during the second phase of an appeal of citations.

Under the new law, where the Division issues serious citations, the Agency is prohibited from making modifications to penalties unless the employer has done one of the following:

- Abated the violation at the time of the inspection.
- Abated the violation at the time of a subsequent inspection prior to the issuance of a citation.
- Submitted a signed statement under penalty of perjury and supporting evidence, when necessary, proving the alleged violation has been abated within 10 working days after the date fixed for abatement.

More importantly, for uncontested citations, if an employer fails to provide a statement and evidence of abatement within the 10 working days after the end of the abatement period, the Division can add additional civil penalties for the failure to abate. These additional penalties for failing to abate would be applied retroactively to the end of the abatement period. Additionally, if employers have not provided evidence of abatement within 45 days following the end of the abatement period, the Division will conduct a re-inspection for any serious violations.

Prior to January 1, 2015, if an employer elected to contest a citation, the abatement of that citation was stayed pending a decision by an Administrative Law Judge (“ALJ”) and pending any additional appeals, such as a Petition for Reconsideration of a Decision. That is, the ALJ Decision was unfavorable to the employer and the employer wanted to appeal again to the California Appeals Board (“Appeals Board”). Under A.B. 1634 the Petition for Reconsideration will not automatically stay the abatement of the violations while the case is before the Appeals Board. Abatement will only be suspended for 10 days once a Petition for Reconsideration is filed. Thereafter, employers can petition the Appeals Board to stay the abatement pending the reconsideration of the ALJ decision. Such petitions will only be granted by the Appeals Board where employers can demonstrate that a stay or suspension of the abatement will not adversely affect the health and safety of employees.

