

362 Stay of Abatement Period and Abatement Changes [4]

(a) Unless otherwise provided by statute, all abatement periods and changes required by the Division are stayed upon the filing of a docketed appeal with the Appeals Board and remain stayed until withdrawal of the appeal or a final disposition of the proceeding by the Appeals Board, unless otherwise ordered by the Appeals Board or as described in subsection (b).

(b) In appeals involving a citation classified as serious, repeat serious, or willful serious, the filing of a petition for, or the pendency of, reconsideration of a final order or decision shall not stay or suspend the requirement to abate the hazards affirmed by the decision or order for more than 10 days, unless a petition for stay meeting the following conditions in (1) through (5) are met:

(1) The employer must request a stay or suspension of abatement by filing a written, verified petition for stay within 10 days after the issuance of the decision or order of an Administrative Law Judge assigned by the Board;

(2) The petition shall be served on all parties who have been joined in the proceeding at the time of filing. A petition to stay or suspend abatement meeting all requirements of these regulations and the Labor Code shall be deemed filed on the date received by the Appeals Board;

(3) The employer's written petition is accompanied by supporting declarations that set forth the evidence demonstrating a stay or suspension of abatement will not adversely affect the health and safety of employees. The employer must demonstrate by a preponderance of the evidence that a stay or suspension of abatement will not adversely affect the health and safety of employees;

(4) A petition to stay or suspend abatement that is not properly verified upon oath and/or not accompanied by a proof of service shall be considered filed in accordance with subsection (3) if the petitioner perfects the petition by filing the verification and/or proof of service within five days of the date of service of a letter from the Appeals Board noting the omission(s);

(5) Failure to perfect a petition to stay or suspend abatement in accordance with subsection (3) shall result in the dismissal of the petition.

(6) An opposing party may file an answer to the petition to stay or suspend abatement no later than 7 days from the service of the petition.

(7) The Board shall issue an order or decision granting the petition to stay or suspend abatement within 30 days of filing. Should the Board fail to act within 30 days, the petition shall be deemed denied.

(c) Staying of order or decision under appeal: proper and timely filing of a petition to stay or suspend abatement with the Board shall temporarily stay abatement during the pendency of the Board's review of the petition to stay or suspend abatement.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7 and 6625 Labor Code.