

Occupational safety and health law handbook

Law



Defenses to Citations of Defenses to Citations Employers are no different from other defendants in lawsuits in that they are also allowed an opportunity to challenge citations leveled against them. In so doing, they can opt either for modification of the citations or the elimination or reduction of the penalties thereto (Schneid & Schumann, 2007). The employers to support any of the above options, which are pursued in legal proceedings, could raise a range of defenses. The defenses, however, vary from one case to another depending on the circumstances.

First, an employer could argue that a citation is time-barred. Section 9(a) of OSHA provides that all citations should reasonably be issued promptly. The limitation period for issuing citations is six months. Therefore, no citation can be vacated within the period unless the delay prejudiced the employer¹. The employer has the burden of proving that the delay hindered his preparation and presentation of the defense. The second defense available to an employer is that the affected employees were not vulnerable to the condition cited (Schneid & Schumann, 2007). The Act requires that any citation must establish that either the employees were exposed to, or there was a potential for their exposure to the hazard in question. Furthermore, the Act requires that either the employer be in control of the hazard or create it. On this latter requirement, the employer could argue that he was unaware of the condition or could not have known the same despite exercising due diligence².

It could also suffice to argue that no hazardous condition prevails at the workplace. There is the assumption that a hazardous condition exists at the workplace if what is violated is a “ specification” standard (e. g. a guardrail in all working surfaces above four feet). Therefore, OSHA must prove that there

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existed a hazardous condition to justify the citation (Schneid & Schumann, 2007). The level of risk must be significant, which means that the employer should know of the hazardous condition requiring protective equipment³. Therefore, the employer has to be a reasonable person conversant with the industry and safety requirements. If OSHA does not prove this standard, the citation is bound to collapse.

References

Schneid, T. D. and Schumann M. S. (2007). *Legal Liability: A Guide for Safety and Loss*

Prevention Professionals. New York: Aspen Publishers