

1 Occupational Safety and Health Review Board

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3 Adopted Permanent Rules Relating to the Occupational Safety and  
4 Health Review Board

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6 Rules as Adopted

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OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

8 5215.0711 SERVICE AND NOTICE TO UNREPRESENTED EMPLOYEES.

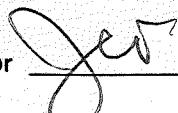
9 Subpart 1. Notice of contest or petition for abatement

10 date. If there are any affected employees who are not  
11 represented by an authorized employee representative, the  
12 employer shall, within ~~two~~ five working days of receiving the  
13 acknowledgment of the notice of contest or petition for  
14 modification of abatement date, post, where the citation is  
15 required to be posted, a copy of the notice of contest and a  
16 notice informing affected employees of their right to party  
17 status and of the availability of all pleadings for inspection  
18 and copying at reasonable times.

19 If, because of the nature of the employer's operations, it  
20 is not practicable to post the notice of contest and notice to  
21 employees at or near the worksite, the notice must be posted in  
22 a prominent place where it can be readily observable by all  
23 affected employees. ~~For-example,~~ If employers are engaged in  
24 activities which are physically dispersed, these notices must be  
25 posted at the location to which employees report each day. If  
26 employees do not primarily work at or report to a single  
27 location, these notices must be posted at the location from  
28 which the employees operate to carry out their activities. If  
29 the employer's operation at the cited worksite ceases and  
30 affected employees are no longer employed by that employer, the  
31 employer must serve a copy of the notice of contest and notice  
32 to employees on all affected employees either by hand delivery  
33 or by mail to the last known address.

34 A notice in the following form complies with this subpart:

35 (Name of employer)



1 Your employer has been cited by the commissioner of labor  
2 and industry for violation of the Minnesota Occupational Safety  
3 and Health Act of 1973. The citation has been contested and may  
4 be the subject of a hearing. Affected employees are entitled to  
5 participate in this hearing as parties in the rules of procedure  
6 established by the Occupational Safety and Health Review Board.  
7 Notice of intent to participate should be sent to: Executive  
8 Secretary, Occupational Safety and Health Review Board, 443  
9 Lafayette Road, Saint Paul, MN ~~55101~~ 55155, or any other address  
10 that the review board has. The notice of intent to participate  
11 must contain the employees' names, addresses, representatives,  
12 if any, and a statement that they are affected employees of the  
13 cited employer.

14 All papers relevant to this matter may be inspected at:  
15 (Place reasonably convenient to employees, preferably at or  
16 near workplace.)

17 Service and notice to affected employees not represented by  
18 an authorized employee representative are deemed accomplished by  
19 posting.

20 Certification of the posting required in this subpart must  
21 be filed with the executive secretary of the board within five  
22 working days of receipt of the acknowledgment of the notice of  
23 contest. If the employer fails to certify the posting in the  
24 prescribed manner, the board may issue an order to show cause  
25 why the contest should not be dismissed on the grounds that the  
26 employer has failed to comply with the posting requirements. If  
27 the employer fails either to show cause or to certify that the  
28 notice of contest ~~has-been~~ was posted within the time prescribed  
29 by this part, the administrative law judge may dismiss the  
30 notice of contest. In those cases where an employer has a  
31 demonstrated history of failing to certify that the notice of  
32 contest has been posted timely, the employer must show cause and  
33 certify that the notice of contest ~~has-been~~ was posted within  
34 the time prescribed by this part to avoid dismissal of the  
35 notice of contest.

36 Subp. 2. Notice of hearing. A copy of the notice of

1 hearing to be held before the administrative law judge must be  
2 served by the employer on affected employees who are not  
3 represented by an authorized employee representative. The  
4 notice of hearing must be posted within ~~two~~ five days of receipt  
5 at or near the place where the citation is required to be posted.

6 Certification of the posting required in this subpart must  
7 be filed with the administrative law judge and a copy served on  
8 the commissioner within five working days of receipt of the  
9 notice of hearing. If the employer fails to certify that the  
10 ~~posting-in~~ notice of hearing was posted within the prescribed  
11 ~~manner~~ time, the administrative law judge may on a motion by one  
12 of the parties or on the judge's own motion render a default  
13 decision.

14 5215.0721 SERVICE AND NOTICE TO REPRESENTED EMPLOYEES.

15 Subpart 1. **Notice of contest.** If there are any affected  
16 employees who are represented by an authorized employee  
17 representative, the employer shall within five working days of  
18 receiving the acknowledgement of the notice of contest or  
19 petition for modification of abatement date serve by first class  
20 mail or personal delivery ~~serve~~ upon the representative the  
21 notice in part 5215.0711, subpart 1, and a copy of the notice of  
22 contest.

23 Service and notice to employees represented by an  
24 authorized employee representative are deemed accomplished by  
25 serving the representative by first class mail or personal  
26 delivery.

27 Certification of the service required in this subpart must  
28 be filed with the executive secretary of the board within five  
29 working days of receipt of the acknowledgment of the notice of  
30 contest. If the employer fails to certify the service in the  
31 prescribed manner, the board may issue an order to show cause  
32 why the contest should not be dismissed on the grounds that the  
33 employer has failed to comply with the service requirements. If  
34 the employer either fails to show cause or to certify that the  
35 notice of contest ~~has-been~~ was served within the time prescribed

1 by this part, the administrative law judge may dismiss the  
2 notice of contest. In those cases where an employer has a  
3 demonstrated history of failing to certify that the notice of  
4 contest has been served timely, the employer must show cause and  
5 certify that the notice of contest has been served within the  
6 time prescribed by this part to avoid dismissal of the notice of  
7 contest.

8 Subp. 2. **Notice of hearing.** ~~A-copy~~ Within five working  
9 days of receipt of the notice of hearing to be held before the  
10 administrative law judge a copy of the notice of hearing shall  
11 be served by the employer on the authorized employee  
12 representative of affected employees, if any, by mail or  
13 personal delivery, if the employer has not been informed that  
14 the authorized employee representative has entered an appearance  
15 as of the date the notice is received by the employer.

16 Certification of the service of the notice of hearing  
17 required in this subpart must be filed with the administrative  
18 law judge and a copy served on the commissioner ~~of-the-board~~  
19 within five working days of receipt of the notice of hearing.  
20 If the employer fails to certify that the ~~service-in~~ notice was  
21 served within the prescribed ~~manner~~ time, the administrative law  
22 judge may on a motion by one of the parties or on the judge's  
23 own motion render a default decision.

24 5215.0730 NOTICE OF CONTEST FILED BY EMPLOYEE OR REPRESENTATIVE.

25 Subpart 1. to 3. [Unchanged.]

26 Subp. 4. **Failure to serve notice of contest.** If the  
27 parties referred to under subparts 1 to 3 fail to certify that  
28 the notice of contest has been posted or served as  
29 required within the time prescribed by this part, the board may  
30 issue an order to show cause why the contest should not be  
31 dismissed on the grounds that the contesting party has failed to  
32 comply with the posting or service requirements. If the party  
33 fails to show cause or to certify that the notice of contest has  
34 been served, the ~~board~~ administrative law judge may dismiss the  
35 notice of contest.

## 1 5215.2000 EMPLOYER CONTESTS.

2 Subpart 1. and 2. [Unchanged.]

3 Subp. 3. Answer. Within 15 days after service of the  
4 complaint, the party against whom the complaint was issued shall  
5 file an answer with the board and serve the answer on every  
6 other party.

7 The answer must contain a short and plain statement denying  
8 those allegations in the complaint which the party intends to  
9 contest. Any allegation not denied is deemed admitted.

10 Subp. 4. Failure to file. If the complaint, notice to  
11 respondent, or the answer is not filed with the executive  
12 secretary in a timely manner, the board or one of the parties  
13 may move to dismiss the contest or the complaint. The hearing  
14 on any such motion shall be conducted before the administrative  
15 law judge.

## 16 5215.2560 HEARING.

17 Subpart 1. Notice of readiness for hearing. Subsequent to  
18 the timely filing of an answer, a party that is prepared for  
19 hearing may file a notice of readiness for hearing with the  
20 board and serve a copy on all parties. Upon receipt of the  
21 notice of readiness for hearing, the board shall schedule a  
22 hearing.

23 Subp. 2. Notice of readiness not filed. If a notice of  
24 readiness for hearing is not filed with the board within 45 days  
25 of receipt of the answer, the board may schedule a hearing and  
26 shall serve written notice of hearing and order on all parties.

27 Subp. 3. Notice of hearing and order. The board shall  
28 serve a written notice of hearing and order under part 1400.5600  
29 and all further proceedings shall be conducted pursuant to  
30 Minnesota Statutes, chapter 14.

31 The employer shall serve a copy of the notice of hearing  
32 and order on affected employees and authorized employee  
33 representatives pursuant to parts 5215.0700 to 5215.0730.

## 34 5215.5300 SETTLEMENT.

1 Subpart 1. Settlement encouraged. Settlement is  
2 encouraged at any stage of the proceedings if the settlement is  
3 consistent with the provisions and objectives of the act, but  
4 shall not delay the scheduling of a hearing in the matter.

5 Subp. 2. Service and notice. A settlement agreement must  
6 be filed with the board or administrative law judge and served  
7 upon affected employees ~~or~~ and authorized employee  
8 representatives by the employer. Service upon affected  
9 employees shall be accomplished by posting. Service upon  
10 employee representatives shall be accomplished by personal  
11 delivery or first class mail.

12 Subp. 3. Contents of settlement agreements and orders.  
13 Settlement agreements must contain:

14 A. an affirmative statement indicating that the  
15 notice of contest was served ~~and/or~~ and posted pursuant to parts  
16 5215.0700 to 5215.0730;

17 B. a provision stating the date on which the employer  
18 has served the agreement upon affected employees in the manner  
19 prescribed by subpart 2;

20 C. an affirmative statement that the contesting party  
21 withdraws the notice of contest; and

22 D. an affirmative statement as to how the settlement  
23 agreement affects the status of the contested citation.

24 Subp. 4. and 5. [Unchanged.]

25 Subp. 6. [See Repealer.]

26 Subp. 7. to 9. [Unchanged.]

27 5215.6100 PENALTIES.

28 The board has no jurisdiction under Minnesota Statutes,  
29 section 182.667 and must conduct no proceeding under it.

30

31 RENUMBER. Minnesota Rules, part 5215.0740, is renumbered  
32 as part 5215.0700, subpart 7.

33

34 REPEALER. Minnesota Rules, parts 5215.0710; 5215.0720;  
35 5215.0750; 5215.2530; and 5215.5300, subpart 6 are repealed.