



ILA-USMX JOINT SAFETY COMMITTEE

OSH ALERT 2019-13 [27 November 2019]

Timely Contesting OSHA Citations

[Section 10 \(a\) of the OSH law](#) provides that an employer has 15 working days after receipt of an OSHA citation within which to contest any part of that citation.

For many, many years, the Occupational Safety & Health Review Commission (OSHRC) has interpreted that tolling of time in a very strict manner. After those 15 days had passed, an employer was time-barred from contesting any citation and could not mount a defense. The citations became a “Final Order” of OSHRC.

On 06 November 2019, however, the U.S. Court of Appeals for the 5th Circuit issued an opinion that changed all that, albeit somewhat narrowly.... for some.

In [Coleman Hammons Construction Co v. OSHRC](#), a panel of three 5th Circuit judges ruled that there were certain circumstances wherein an untimely notice of contest could be received as a product of “*excusable neglect*.”

In sum, at Coleman Hammons, the well-established procedure for receipt and processing of OSHA citations (and similar correspondence) had not been followed by mid and lower level administrative staff.

The Court’s opinion held that the untimely filing of Coleman Hammons’ letter of contest was occasioned by “*an unforeseeable human error beyond* [the company’s] *reasonable control*.”

Thus, in the 5th Circuit at least, there are means with which to seek relief from the heretofore iron-clad 15 working day “drop dead date” associated with the contesting of OSHA citations.

In the fullness of time, it may be reasonably expected to see similar appeals reach into the other Circuits.

Note: The links set out above are active, and will take the reader to the relevant section of the OSH Act and to the decision published by the U.S. Court of Appeals for the 5th Circuit, respectively.

Got a question about this particular subject? Write to the JSC at: blueoceana@optonline.net

Working Together For The Benefit Of All

ILA-USMX OSH Alerts are devised to reflect the best possible information and guidance, and are products of diligent research and the most up to date subject matter knowledge. Consequently, while the information contained herein is believed to be accurate, owing to a host of factors ILA-USMX can convey no direct or implied warranty relative to the reliance of parties upon content.