

OSHA Quick Tips for FTBA Members

If an OSHA citation item proposes a penalty of \$0.00, the employer should just accept it and move on, right?

It certainly would cost more in time and money to go to the informal and even contest the citation. But is there something else to consider?

There are many negotiable parts to a citation item and the proposed penalty is just one.

Others include:

- ① The cited specific standard or general duty clause - does it apply? Was it violated? For general duty, what is the recognized hazard? What are the feasible means of abatement?
- ② The narrative - is the alleged violation description accurate and narrowly tailored? Does it needlessly expand the possibility of a repeat because it is too broad?
- ③ Classification - Is the item Willful, Repeat, Serious, or Other-than-Serious? Does the evidence support the classification? What is the impact of the classification?
- ④ Abatement - Does the item require abatement documentation or certification? Is the abatement feasible? (TIP: the abatement date is meaningless until the employer agrees on the citation item through settlement or the citation is enforced by the Review Commission.)
- ⑤ Employer identity - does the citation identify the proper employer? (This is an issue that you should address when the inspection first begins - during the opening conference is best.)
- ⑥ Timely? - Did OSHA issue the citation within six months of the alleged violation? Do not assume this. Always check the date. OSHA cannot seek to enforce an untimely citation item and it must be deleted.

What is NOT in the citation, but is critical?.....

The exculpatory clause.

Even if the employer decides to accept an entire citation package as-is, it should NOT just sign and submit.

It is almost always best for the employer to enter into an informal settlement agreement with OSHA that includes what is called an exculpatory or non-admission clause. In it, the employer is making it clear it is not admitting to violating the OSH Act or any specific standard. It is also not admitting any fault for legal issues outside the OSH Act. This is critical in limiting the legal liability and possible third-party exposure.

TIP: An exculpatory clause does NOT prevent OSHA from issuing a repeat violation in the future. But don't ever settle with OSHA without one.