

CHAPTER 5215
DEPARTMENT OF LABOR AND INDUSTRY
OCCUPATIONAL SAFETY AND HEALTH BOARD
PROCEDURAL RULES

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5215.0700 SERVICE AND NOTICE.

Subpart 1. Parties and intervenors. At the time of filing pleadings or other documents, a copy shall be served by the filing party or intervenor on every other party or intervenor.

Subp. 2. Representatives. Service upon a party or intervenor who has appeared through a representative must be made only upon such representative.

Subp. 3. Methods of service. Unless otherwise ordered, service may be made by postage-prepaid first class mail, personal delivery, or by posting. Service is made at the time of mailing, personal delivery, or posting.

Subp. 4. Proof of service; filing. Service must be certified by a written statement that sets forth the date and manner of service. The statement must be signed by the person accomplishing service, and it must be filed with the pleading or document.

Subp. 5. Service by posting; certification and filing. If service is made by posting, the posting must take place within two working days of receipt of the document posted. Certification of posting must be filed with the executive secretary within five working days of receipt of the document.

Subp. 6. Service by first class mail; certification and filing. Where service is accomplished by first class mail or personal delivery, certification must be filed with the executive secretary within five working days of receipt of the document.

Subp. 7. Posting maintained. Where posting is required by parts 5215.0700 to 5215.0750, posting must be maintained until commencement of the hearing or until earlier disposition.

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *13 SR 2552*

5215.0710 [Repealed, 13 SR 2552]**5215.0711 SERVICE AND NOTICE TO UNREPRESENTED EMPLOYEES.**

Subpart 1. Notice of contest or petition for abatement date. If there are any affected employees who are not represented by an authorized employee representative, the employer shall, within five working days of receiving the acknowledgment of the notice of contest or petition for modification of abatement date, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times.

If, because of the nature of the employer's operations, it is not practicable to post the notice of contest and notice to employees at or near the worksite, the notice must be posted in a prominent place where it can be readily observable by all affected employees. If employers are engaged in activities which are physically dispersed, these notices must be posted at the location to which employees report each day. If employees do not primarily work at or report to a single loca-

tion, these notices must be posted at the location from which the employees operate to carry out their activities. If the employer's operation at the cited worksite ceases and affected employees are no longer employed by that employer, the employer must serve a copy of the notice of contest and notice to employees on all affected employees either by hand delivery or by mail to the last known address.

A notice in the following form complies with this subpart:

(Name of employer)

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

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

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

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

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

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

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *13 SR 2552*

5215.0720 [Repealed, 13 SR 2552]

5215.0721 SERVICE AND NOTICE TO REPRESENTED EMPLOYEES.

Subpart 1. Notice of contest. If there are any affected employees who are represented by an authorized employee representative, the employer shall within five working days of receiving the acknowledgment of the notice of contest or petition for modification of abatement date serve by first class mail or personal

delivery upon the representative the notice in part 5215.0711, subpart 1, and a copy of the notice of contest.

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

Certification of the service required in this subpart must be filed with the executive secretary of the board within five working days of receipt of the acknowledgment of the notice of contest. If the employer fails to certify the service in the prescribed manner, the board may issue an order to show cause why the contest should not be dismissed on the grounds that the employer has failed to comply with the service requirements. If the employer either fails to show cause or to certify that the notice of contest was served within the time prescribed by this part, the administrative law judge may dismiss the notice of contest. In those cases where an employer has a demonstrated history of failing to certify that the notice of contest has been served timely, the employer must show cause and certify that the notice of contest has been served within the time prescribed by this part to avoid dismissal of the notice of contest.

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

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

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *13 SR 2552*

5215.0730 NOTICE OF CONTEST FILED BY EMPLOYEE OR REPRESENTATIVE.

[For text of subps 1 to 3, see M.R.]

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

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *13 SR 2552*

5215.0740 [Renumbered 5215.0700, subp. 7]

5215.0750 [Repealed, 13 SR 2552]

5215.2000 EMPLOYER CONTESTS.

[For text of subps 1 and 2, see M.R.]

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

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

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

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *13 SR 2552*

5215.2530 [Repealed, 13 SR 2552]

5215.2560 HEARING.

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

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

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

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

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *13 SR 2552*

5215.5300 SETTLEMENT.

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

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

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

A. an affirmative statement indicating that the notice of contest was served and posted pursuant to parts 5215.0700 to 5215.0730;

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

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

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

[For text of subps 4 and 5, see M.R.]

Subp. 6. [Repealed, 13 SR 2552]

[For text of subps 7 to 9, see M.R.]

5215.5300 PROCEDURAL RULES

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Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *13 SR 2552*

5215.6100 PENALTIES.

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

Statutory Authority: *MS s 14.06; 182.661 subd 3,3a; 182.664 subd 3*

History: *13 SR 2552*