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The Financial and Operational Dangers from Missing or Ignoring Citation Deadlines – PART II

Last month, we provided you with a Client Alert which emphasized the importance of responding to OSHA citations in a timely manner. It should be noted that the applicable response period can vary depending upon whether the enforcement agency is from the state or the federal government. In Tennessee, companies have 20 days to respond to TOSHA violations, while in Georgia, federal OSHA has jurisdiction and the response deadline is 15 days from the date on which the citation or notice of violation is received.

The purpose of the second update is to illustrate an additional “late response” issue which just occurred.

Recently, another client had its manufacturing facility inspected by federal OSHA (“OSHA”). Following the inspection, multiple citations were issued, and the client received the citation notice via certified mail. The client had 15 days from the date of receipt of the citations to respond to OSHA to request an informal conference and a formal hearing. The client should have sent a written request asking for all available consideration within that 15-day window.

Here is where the facts and circumstances of this case become confusing. Specifically, while the client did not make a written request to OSHA for a conference or hearing, the client did contact the OSHA Inspection Officer, within the 15 day notice period, to discuss proper remedies and corrective action for the violations which were cited.

The client assumed that by promptly initiating contact with the inspection officer that the client was preserving its rights to appeal, consistent with the 15-day deadline.

Unfortunately, OSHA disagreed, thus leaving the client without its statutory right to an appeal and hearing. A phone call to the Inspection Officer does not equate to the necessary written notice requirements. (Note: in this particular case, OSHA has granted a “preliminary” hearing for the sole purpose of deciding if the client’s late submission of a request for a hearing related to the violations should be allowed, but others in this situation may not be afforded even this opportunity.)

If you do receive a citation or notice of violation from any enforcement agency – or even a simple information request – please read it carefully, pay close attention to the amount of the fines or penalties proposed, and pay extremely close attention to deadlines and opportunities to appeal or contest the agency’s action. If a written response is required, then you must respond in writing.

The attorneys at Miller & Martin are always available to assist you in interpreting the document and confirming your rights and obligations as well as the means and deadlines to respond.

Please contact [Mike Mallen](#) or [Brian Humphrey](#) if you have any questions or need assistance with any health, safety, environmental, or related regulatory issues.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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