

March 20, 2023

Senator Ron Latz  
Chair of the Senate Judiciary and Public Safety Committee  
95 University Avenue W.  
Minnesota Senate Building, Room 3105  
St. Paul, MN 55155

Dear Chair Latz:

Thank you for the opportunity to answer the Judiciary and Public Safety Committee's questions about SF1384, Minnesota OSHA's Policy and Technical bill. The committee asked for more information about how MNOSHA communicates with employers before and after citations are issued, in response to testimony from the Associated Builders and Contractors of Minnesota and North Dakota.

Through written manuals and training, MNOSHA requires its occupational safety and health investigators (OSHIs) to stay in communication with an employer throughout the inspection process. The inspection begins with an opening conference where the employer is given introductory information by the OSHI, including the purpose of the inspection. The employer then accompanies the OSHI during the walk-around portion of the inspection. The OSHI describes all apparent violations to the employer and relates them to the applicable standards. Finally, during a closing conference conducted at the end of the inspection, the OSHI reviews all violations they noted during the walk-around and discusses alternative abatement methods and reasonable abatement periods. The employer may ask the OSHI questions about the inspection process or violations at any time.

If citations are appropriate, MNOSHA sends the citations to the employer by certified mail. Each citation item lists the specific standard violated (with a specific citation to state or federal statutes or rules) and contains a brief, but detailed, description of the alleged violation. The descriptions includes *when* the violation occurred, *what* specific equipment or practice is alleged to be in violation of the standard, *where* the equipment or practice was located, *how* and/or *why* it violates the standard, and *who* was or has been exposed to the hazard the standard is designed to prevent.

Once the employer receives citations, if any, it may contest them by filing a Notice of Contest. This triggers an informal conference where MNOSHA meets with the employer to answer questions about the citations and also discusses the employer's reasons for contest. If settlement is not reached at this stage, the file is referred to the Attorney General's Office for litigation.

After referral, the assistant attorney general assigned files the contested case with the Office of Administrative Hearings. The assistant attorney general works collaboratively with the employer or employer's attorney and Administrative Law Judge (ALJ) to obtain a protective order for the inspection report. Once the order is in place, the inspection report is shared with the employer. At the federal and state level, the identities of employees

who provide MNOSHA with information are private and must be redacted from the report. MNOSHA's inspection reports routinely contain highly sensitive information, such as information identifying injured employees, employee exposure records, medical data, reports from the medical examiner in fatality cases, and trade secret or security information. The issuance of a protective order by an ALJ is an important part of the process to ensure that the report is not further disseminated during the litigation process.

The provision at issue – to make citations issued public after the employer has been given adequate notice – will bring MNOSHA in line with federal OSHA and the vast majority of state plans. MNOSHA asks for your support of SF1384 and welcomes discussion of these or any other concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Blissenbach". The signature is fluid and cursive, with the first name "Nicole" written in a larger, more prominent script than the last name "Blissenbach".

Nicole Blissenbach, Commissioner  
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