

875—3.20 (88) Policy regarding employee rescue activities.

3.20(1) The labor commissioner or the commissioner's designee shall review the inspection report of the compliance safety and health officer. If, on the basis of the report, the labor commissioner or the commissioner's designee believes that the employer has violated a requirement of Iowa Code section 88.4 or any rule, the commissioner or the commissioner's designee shall issue to the employer either a citation or a notice of de minimis violations which has no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.

3.20(2) Any citation shall describe with particularity the nature of the alleged violation, including a reference to Iowa Code chapter 88, or rule alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

3.20(3) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under subrule 3.7(1) or a notification of violation under subrule 3.7(3), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

3.20(4) Every citation shall state that the issuance of a citation does not constitute a finding that a violation has occurred unless there is a failure to contest as provided for in Iowa Code chapter 88 or, if contested, unless the citation is affirmed by the appeal board.

3.20(5) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

a. The employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and the employer fails to provide protection of the safety and health of the employee, including failing to provide appropriate training and rescue equipment; or

b. The employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

c. The employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; and such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual. Additionally, the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

3.20(6) For purposes of this policy, the term "imminent danger" means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.