

**486—4.36(10A,88) Petitions for modification of abatement period.**

**4.36(1)** An employer may file a petition for modification of abatement period with the commissioner of labor when such employer has made a good faith effort to comply with the abatement requirements of a citation, but abatement has not been completed because of factors beyond the employer's reasonable control.

**4.36(2)** A petition for modification of abatement period shall be filed with the commissioner of labor no later than the close of the next working day following the date on which abatement was originally required. A letter-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

**4.36(3)** A petition for modification of abatement period shall be in writing and shall include the following information:

*a.* All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

*b.* The specific additional abatement period necessary in order to achieve compliance.

*c.* The reason such additional time is necessary in order to achieve compliance.

*d.* All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

*e.* Certification by the employer that it has posted a copy of the petition for modification of abatement period, and a notice informing affected employees of their right to intervene and of the availability of all pleadings for inspection and copying at reasonable times. Service of the above documents upon any authorized employee representative shall also be certified by the employer. A notice in the following form shall be deemed to comply with this subrule:

(Name of employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested more time to correct one or more violations. Affected employees are entitled to participate as parties under terms and conditions established by the employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer's petition with the commissioner of labor. Failure to file such objection within ten working days of the first posting of the accompanying petition and this notice shall constitute a waiver of any further right to object to the petition or to participate in any proceeding relating thereto. Objections shall be sent to: Commissioner of Labor, Labor Services Division, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near workplace).

**4.36(4)** The commissioner of labor shall have the authority to approve a petition for modification of abatement period filed in accordance with subrules 4.34(2) and 4.36(3), but the commissioner of labor shall not exercise approval power until the expiration of 15 working days from the date the petition and notice were first posted pursuant to 4.36(3) "e" and 4.36(5). Uncontested approved petitions shall be deemed final orders of the employment appeal board.

**4.36(5)** The employer shall post a copy of the petition and a notice of employee rights complying with 4.36(3) "e" before filing a petition with the commissioner of labor. Such posting shall be in a conspicuous place where all affected employees will have notice thereof or near each location where the violation occurred. The petition and notice of employee rights shall remain posted for a period of ten working days. Where affected employees are represented by an authorized representative, the representative shall be served with a copy of the petition.

**4.36(6)** Affected employees or their representatives may file an objection in writing to the petition with the commissioner of labor. Failure to file an objection within ten working days of the date of posting of the petition or of service upon an authorized representative shall constitute a waiver of any further right to object to the petition.

**4.36(7)** Where an objection is filed by an affected employee or authorized employee representative, a copy of that objection shall be provided to the employer for posting along with the documents specified in 4.36(5). An authorized employee representative who files an objection shall serve any other authorized employee representative whose members are affected employees.

**4.36(8)** Where any petition is objected to by affected employees or by the commissioner of labor, such petition shall be processed as follows:

*a.* The petition, citation, and objections shall be forwarded to the employment appeal board within 3 working days after the expiration of the 15-working-day period set out in 4.36(4).

*b.* The employment appeal board shall docket and process such petition as an emergency proceeding under 4.101(3).

*c.* An employer petitioning for modification of an abatement period shall have the burden of proving that it has made a good faith effort to comply with the abatement requirements of the citation and abatement has not been completed because of factors beyond its reasonable control.

*d.* Within ten days after receipt of the notice of docketing by the employment appeal board, each objecting party or intervenor may file a response to the petition or a statement of position regarding the petition with the employment appeal board.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.