

2.33. PROCEDURE REGARDING STOP WORK ORDERS PURSUANT TO G.L. 1956

§ 28-36-15(i). -- (A)(1) In the event that the Director of the Department of Labor and Training issues an order suspending the operation of an employer for failure to secure workers' compensation insurance, the employer may appeal the entry of the order to the Workers' Compensation Court.

(2) The court shall schedule a hearing within five (5) days of the filing of the appeal to determine whether the order of suspension may be stayed. In order to obtain a court order staying the Director's order of suspension, it shall be the burden of the employer/appellant to present specific facts to demonstrate that the substantial rights of the employer have been prejudiced because the Director's order is (a) in violation of the Department's constitutional or statutory authority, (b) made upon unlawful procedure, (c) arbitrary, capricious, or characterized by clear abuse of discretion, or (d) clearly erroneous and that immediate and irreparable loss, damage, or injury will result to the employer if the order of suspension remains in effect during the pendency of the appeal.

(3) The proceeding to stay the order of suspension pending a hearing on the merits shall be on the record. All agreements or stipulations entered during the course of the proceeding shall be binding.

(4) Following the hearing, the court shall issue an order determining whether the Director's order of suspension may be stayed during the pendency of the appeal on the merits or whether the order shall remain in full force and effect. The court shall set a date for a full hearing on the merits within twenty-one (21) days.

(B)(1) In the event that the Director of the Department of Labor and Training issues an order suspending the operation of an employer for failure to secure workers' compensation insurance and the employer has failed to comply with said order, the Director may file a petition with the court for an emergency hearing to enforce the terms of her/his order. The petition shall state the facts establishing the basis for the order of suspension, the dates on which the order was entered by the Department and served upon the employer, and that the employer has continued to operate its business following the entry of said order.

(2) The court shall schedule a hearing on the petition to enforce within forty-eight (48) hours of the date of filing and provide notice of the date and time of the hearing to the Director. The Director shall effect service of the petition and notice on the employer by delivering a copy of the petition and notice to a person individually or, if a private corporation, by delivering a copy of the petition and notice to an officer, or a managing or general agent, or by delivering a copy of the petition and notice at an office of the corporation to a person employed by said corporation, or by delivering a copy of the petition and notice to an agent authorized by appointment or by law to receive service of process. If the employer is a public corporation, body, or authority, service shall be made by delivering a copy of the petition and notice to any officer, director, or manager thereof. Service of the petition and notice shall be made by a sheriff or the sheriff's deputy within the sheriff's county, or by a person who is not a party to the proceedings and who is at least eighteen (18) years of age. The Director shall certify to the court that such service has been effected prior to the time of the hearing.

(3) The court shall conduct a pretrial conference in connection with the Director's petition to enforce in accordance with G.L. 1956 § 28-35-20 and W.C.C. – R.P. 2.3 of the Rules of Practice of the Workers' Compensation Court. Following the pretrial conference, the court shall enter a pretrial order granting or denying the petition to enforce. The pretrial order shall be binding on the parties as of the date of entry and the filing of a claim for trial shall not stay its operation. If either party is aggrieved by the court's pretrial order, they may file a claim for trial which shall proceed in accordance with the Workers' Compensation Act and the Rules of Practice of the Workers' Compensation Court.

Reporter's Notes. This rule was enacted to establish the procedure in those cases where the Director of the Department of Labor and Training issues an order requiring an employer to cease operations for failure to maintain workers' compensation insurance pursuant to G.L. 1956 § 28-36-15(i). This rule recognizes that such an order could have a devastating impact upon the operation of a business and therefore allows the employer to file an immediate appeal to the Workers' Compensation Court seeking a stay of the Director's order. The employer has the burden to present facts setting forth the procedural or substantive errors made by the Director and, more importantly, requires the employer to demonstrate that irreparable harm will result if the order is not stayed pending appeal. The request for a stay of the Director's order will be heard by the court within five (5) days of the date of filing the appeal.

W.C.C. – R.P. 2.33(B) addresses the situation where the Director has issued an order suspending business operations for the failure to secure workers' compensation insurance and the employer continues to conduct operations in defiance of that order. G.L. 1956 § 28-36-15(i) specifically notes that "the operation of a commercial enterprise without the required workers' compensation insurance is a crime and creates a clear and present danger of irreparable harm to employees who are injured while the employer is uninsured." In light of this, the court determined that immediate action was required when the employer is operating in defiance of the Director's order. W.C.C. – R.P. 2.33(B)(2) provides that a pretrial conference will be held within forty-eight (48) hours of the date a petition to enforce is filed by the Director and imposes upon the Director of the Department of Labor and Training the duty to make actual service upon the employer. The rule provides that if the court is satisfied that the employer is required to maintain workers' compensation insurance and has failed to do so, a pretrial order shall enter suspending the employer's business operations. If the employer continues to conduct business following the pretrial order, it would be subject to contempt proceedings.