
Variations

What is a variance?

A variance is an alternate, equally-effective method of addressing a workplace hazard that is different from what is required by a specific SC OSHA standard. To obtain a variance, an employer must submit a petition SC OSHA. Variances are not a means to avoid complying with a standard.

What are the types of variances?

There are two types of variances that SC OSHA may issue: Temporary and Permanent.

What is a temporary variance?

A temporary variance is designed to provide employers with short-term relief from a standard in certain limited situations when the employer cannot immediately comply with a standard as adopted by SC OSHA. Temporary variances may be in effect for no longer than the period needed by the employer to achieve compliance with the standard, or for one year, whichever is shorter.

A temporary variance may be appropriate when:

- 1) An employer is unable to comply with a standard by its effective date because:
 - a. Professional or technical personnel needed to come into compliance with the standard are unavailable, or
 - b. Materials and equipment needed to come into compliance with the standard are unavailable, or
 - c. necessary construction or alteration of facilities cannot be completed by the effective date, AND
- 2) The employer is taking all available steps to safeguard its employees against the hazard covered by the standard, AND
- 3) The employer has an effective program for coming into compliance with the standard as quickly as practicable.

What is a permanent variance?

A permanent variance allows an employer to use an alternate means to comply with the requirements of a standard when the employer can prove that its proposed conditions, practices, means, methods, operations, or processes provide a work environment as safe and healthful as the environment that would be created if the standard was adopted.

While a permanent variance is not limited in duration, the variance is eligible to be considered for revocation or modification at any time six months or more after its issuance. The revocation or modification process can be initiated by SC OSHA, the employer, or an affected employee.

What is the effect of an interim order?

An interim order allows an employer to utilize the alternative means of compliance with the standard that it has included in its temporary or permanent variance petition while the decision on the petition is pending. The employer must request that SC OSHA issue such order.

Are variance petitions public information?

Yes. When a petition for variance is received, SC OSHA will provide public notice in at least one newspaper with general circulation in the State including the following information: the name of the company petitioning for the variance, the location of the facility, the standard from which a variance is requested, and a general description of the reason or reasons for the variance request.

The petition will also be made available for inspection and copying upon request at the Office of Labor, Licensing and Regulation, Division of OSHA, Columbia, South Carolina. Interested persons, including employers and employees will be invited to submit comments on the petition within 20 days following the date of the publication of public notice. Employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the petition for variance within 20 days after the publication of the notice.

In what circumstances are variance petitions not appropriate?

- The requested variance is from a “performance” standard, (i.e., a standard that does not describe a specific method for meeting the requirements of the standard)
- The requested variance is from a “definition” in a standard, (i.e., a provision that defines a term used in the standard, but does not expressly specify an action for meeting a requirement of the standard)
- There is an OSHA standard in effect that allows the requested alternative
- There exists an OSHA interpretation that permits the requested alternative
- There is an updated edition of a national consensus or industry standard referenced in the OSHA standard, and that is the subject of the variance application, that permits the requested alternative
- If the application is for a temporary variance, the employer applied on or after the date the standard became effective
- The applicant is contesting a citation involving the standard in question, or has an unresolved citation relating to this standard
- The variance is being requested because the employer cannot afford to comply with the standard

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