



# Mining MSHA – Revisiting The Conferencing Process

Insights

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*Welcome to “Mining MSHA,” a regular series of posts focusing on mine safety fundamentals – but designed for both new and experienced mine safety professionals. This series will help safety professionals develop their MSHA legal knowledge, as we explore over 40 years of case law developed by the Federal Mine Safety and Health Review Commission and its bench of Administrative Law Judges. You will want to share this series with your safety personnel at all levels, because understanding what MSHA can and cannot legally do is the first step in managing your relationship with this enforcement agency. Join your Fisher Phillips Mine Safety team as we mine legal knowledge from the body of Federal Mine Safety and Health law.*

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If there is one thing operators can depend on during these uncertain times, it is MSHA issuing citations while conducting inspections of your operations. The agency has repeatedly stated it is conducting business as usual – and this means issuing citations with which you may not agree. Remember that you always have the option of conferencing these citations.

Most of you have been conferencing citations for years, and many of you have a “go to” person within the district you typically send your conference request to – the local field office supervisor, the staff assistant in the district office, the assistant district manager, or maybe even the district manager. With MSHA reorganizing into a regional model and the large number of personnel changes we have seen, the agency has recommitted to following the regulations and policy guidance it has published for the conferencing process. Here is what you need to know.

- First, the conference itself is **discretionary**. The district manager has the power to decide whether to hold a conference and what will be conferenced. Therefore, any requests should be sent to the district manager of your district.
- Conference requests should be sent to MSHA **within 10 days** from notification of your conferencing right. This notification starts the 10-calendar-day period during which you can make the request. According to MSHA’s Program Policy Manual (PPM), this can be at the time the inspector issues a citation or order or at the inspector’s closeout conference – depending on when the agency informs you of your conferencing right. You will not miss the conferencing deadline if you calculate the 10-calendar-day deadline from the date of issuance.
- Every conference request must be made **in writing** – sending an email or a document in an email to the district manager is acceptable. Your conference request should include a brief statement

why each citation or order should be conferenced.

- If your conference is granted, a **Conference Litigation Representative** (CLR) will typically handle the conference. The CLR will reach out to you and schedule the conference. Be prepared to discuss any issues you have with the issuance of the citation or order, including the inspector's evaluation of negligence, and gravity (S&S).
- You can **share relevant information** regarding the conditions cited with the CLR during the conference. Usually, this information will be discussed with the inspector and evaluated by the CLR. Take the time to explain your position – focus on facts and evidence and avoid general statements like “I just don't agree.”
- Typically, MSHA will inform you of **the results of the conference**. At that point, you can decide whether to accept the CLR's proposal or to continue with contesting the citation and penalty.

## Conclusion

Reach out to your mine safety lawyer, or [any attorney in our Mine Safety & Health group](#), for specific questions and guidance on the conferencing process. However, conferences are best utilized as a discussion between you and MSHA and are not usually a forum for legal arguments. Your mine safety lawyer can inform you of the current state of the law and which arguments can be effective. Conference results have varied, but you may find the process a meaningful experience and get some helpful results.

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*This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

## Related People



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