

VARIANCES: FREQUENTLY ASKED QUESTIONS

What does my petition for a temporary variance need to include?

A petition for a temporary variance must be type-written and must include:

- (1) The name and address of the petitioner;
- (2) the address of the place or places of employment involved;
- (3) a specification of the standard or portion thereof from which the petitioner seeks a variance;
- (4) a representation by the petitioner, supported by representations from qualified persons having first-hand knowledge of the facts represented, that he is unable to comply with the standards or portion thereof by its effective date and detailed statement of the reasons thereof;
- (5) a statement of the steps the petitioner has taken or will take with specific dates where appropriate, to protect employees against the hazard covered by the standard;
- (6) a statement of when the petitioner expects to be able to comply with the standards and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standard;
- (7) a statement of the facts the petitioner proposes to prove:
 - (a) The petitioner is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alternation of facilities cannot be completed by the effective date;
 - (b) He is taking all available steps to safeguard his employees against the hazards covered by the standard;
 - (c) He has an effective program for coming into compliance with the standard as quickly as practicable;
- (8) Any request for a hearing;
- (9) A statement that the petitioner has informed his affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means;
- (10) A description of how affected employees have been informed of the petition and of their rights to petition SC OSHA for a hearing.

The petition will also need to be verified. This means that it should include a written statement by the employer or the attorney of record, sworn to or affirmed before an officer authorized to administer oaths, that the petitioner knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true.

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What does my petition for a permanent variance need to include?

A petition for a permanent variance must be type-written and must include:

- (1) The name and address of the petitioner;
- (2) The address of the place or places of employment involved;
- (3) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the petitioner;
- (4) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard for which a variance is sought;
- (5) A statement that the petitioner has informed his affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means;
- (6) Any request for a hearing; and
- (7) A description of how employees have been informed of the petition and of their right to petition SC OSHA for a hearing.

The petition will also need to be verified. This means that it should include a written statement by the employer or the attorney of record, sworn to or affirmed before an officer authorized to administer oaths, that the petitioner knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true.

I am an employee, and my employer was granted a permanent variance. I want to petition SC OSHA to revoke the variance. What should I do?

The variance can be considered for modification or revocation after six months of issuance. To initiate the process, submit a petition to SC OSHA containing:

- 1) the name and address of the petitioner;
- 2) a description of the relief which is sought;
- 3) a statement setting forth with particularity the grounds for relief;
- 4) a certification that a copy of the petition has been furnished to the employer;
- 5) whether you wish to request a hearing, including,
 - (a) how the proposed modification or revocation would affect the petitioning party; and
 - (b) what the petitioning party would seek to show on the subjects or issues involved.

I am an employer who obtained a variance. I want to petition SC OSHA to modify the variance. What should I do?

The variance can be considered for modification or revocation beginning six months after issuance. To initiate the process, submit a petition to SC OSHA containing:

- 1) the name and address of the petitioner;
- 2) a description of the relief which is sought;

VARIANCES: FREQUENTLY ASKED QUESTIONS

- 3) a statement setting forth with particularity the grounds for relief;
- 4) a certification that the petitioner has informed his affected employees of the petition by:
 - (a) giving a copy thereof to their authorized representative; and
 - (b) posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full petition may be examined (or, in lieu of the summary, posting a copy of the petition)
- 5) whether you wish to request a hearing, including,
 - (a) how the proposed modification or revocation would affect the petitioning party; and
 - (b) what the petitioning party would seek to show on the subjects or issues involved.

I was issued a citation by SC OSHA. I now wish to seek a variance so that SC OSHA will recognize the practice for which I was cited. What should I do?

Variations have only future effect. SC OSHA may decline to review a petition for a variance on a subject or issue concerning a standard for which a citation has been issued to the employer until the period of contest has ended or until the matter is otherwise resolved before the Administrative Law Court.

How does a petition for a limitation, variation, tolerance, or exemption as mentioned in S.C. Code Ann. Regs 71-208 differ from a petition for a variance?

These petitions are solely for deviations from SC OSHA standards that are sought because they are necessary and proper to avoid serious impairment of the national defense or State security.

I have a temporary variance, but it has almost been a year since it was granted, and I am still unable to come into compliance with the standard. What should I do?

No temporary variance may be in effect for longer than the period needed by the employer to achieve compliance with the standard, or for one year, whichever is shorter. However, employers may seek renewal of the temporary variance not more than twice so long as an application for renewal is filed at least ninety days prior to the expiration date of the temporary variance order. No interim renewal of an order may remain in effect for longer than 180 days.

Can I seek a variance from SC OSHA's recordkeeping requirements?

Variations from OSHA's recordkeeping requirements are only granted at the federal level. Any petition requesting a variance from these requirements will be transmitted to federal OSHA for processing. The State of South Carolina will honor any variance granted by the Secretary of Labor.

I have worksites in multiple states. Where do I file for a variance?

If you have operations in more than one state, the variance petition process will differ depending on whether your worksites are located in states under federal OSHA's jurisdiction or in other states with state plan jurisdiction.

If at least one of your worksites is under federal OSHA jurisdiction, you can apply for a variance directly with federal OSHA. Visit the following website for more information: <https://www.osha.gov/variance-program/how-to-apply>.

If you do not have a worksite under federal OSHA jurisdiction, you will likely need to petition SC OSHA for a variance for your facilities located in South Carolina.

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Federal OSHA has granted a variance to my company in another state. If I will need the same variance for my new facility in South Carolina, do I need to file a new petition for variance with SC OSHA?

Generally speaking, no. SC OSHA recognizes any temporary or permanent variance which has been granted by the Secretary of Labor. However, you are required to file the Final Rule or Order of the Secretary of Labor with SC OSHA.