

**STATE OF NEW MEXICO  
BEFORE THE  
OCCUPATIONAL HEALTH AND SAFETY REVIEW COMMISSION**

**NEW MEXICO ENVIRONMENT  
DEPARTMENT,**

**Complainant,**

**Case No.: OSHA 23-25**

**v.**

**BLAKE’S LOTABURGER LLC,**

**Respondent.**

**ADMINISTRATIVE COMPLAINT**

1. The Complainant, the New Mexico Environment Department (NMED or "Department"), is an executive level agency, established by the Department of Environment Act, NMSA 1978, Sections 9-7A-1 to -12 (1991, as amended through 2005). The Department, on behalf of the Occupational Health and Safety Bureau (“Bureau”), an organizational unit of the Department, and pursuant to NMSA 1978, Sections 50-9-8(D) and 50-9-17(D) (1975) of the New Mexico Occupational Health and Safety Act, NMSA 1978, §§ 50-9-1 to -25 ("OHSA"), and the New Mexico Occupational Health and Safety Regulations, 11.5.5 NMAC ("OHSR"), brings this Administrative Complaint against Blake’s Lotaburger, LLC (hereafter referred to as “Blake’s”) to enforce the OHSA and the OHSR and assess civil penalties.

**JURISDICTION**

2. The purpose of enacting the OHSA was to assure every employee safe and healthful working conditions through effective enforcement of health and safety regulations. NMSA 1978, § 50-9-2 (1993).

3. The OHSA establishes the Occupational Health and Safety Review

Commission (OHSRC) to carry out certain functions under the OHSA, including holding hearings. NMSA 1978, § 50-9-9 (1975) and 115.5.700 NMAC.

4. The OHSA authorizes the Bureau to issue citations for violations of the OHSA and the OHSR. An employer to whom a citation is issued may contest that citation. If an employer contests a citation, the Bureau shall provide prompt opportunity for an informal administrative review. NMSA 1978, § 50-9-17 (1999); 115.5.306 NMAC.

5. In the event the parties are unable to resolve the contested issues through the informal administrative review process, the Department shall file an Administrative Complaint with OHSRC within ninety (90) days after the docketing of the case. NMSA 1978, § 50-9-8(D) (1993); NMSA 1978, §50-9-17(D); 115.5.306.D(1)(a) NMAC. Informal administrative review is deemed concluded upon the earlier of the Respondent's receipt of the Department's Administrative Complaint or three (3) days after expiration of the ninety-day period following docketing of the case. 115.5.306.D(2)(a) NMAC.

6. The procedural regulations for filing an administrative complaint and the timeframe for settlement or filing an answer before the Occupational Health and Safety Review Commission are contained in 115.5 NMAC.

7. Respondent Blake's is a foreign limited liability company with a New Mexico registered agent, C T Corporation System, at 306 S. Coronado Ave., Espanola, NM 87532-2792.

8. The Bureau is an agency of the executive branch of New Mexico State Government and is charged with the administration and enforcement of the OHSA and the OHSR.

9. On February 16, 2023, the Bureau issued Blake's a Citation and Notification

of Proposed Penalty for two (2) violations of the OHSA and OHSR that occurred at a Blake's worksite in Espanola, New Mexico.

10. Blake's filed a Notice of Contest which was docketed by the OHSRC on March 7, 2023.

11. The informal administrative review process has proceeded without resolution.

### **STATEMENT OF CLAIM**

12. On August 29, 2022, the Bureau conducted a fatality investigation and inspection of the Blake's worksite located at 206 North Paseo de Onate, Espanola, New Mexico after learning of the workplace death of a Blake's employee.

13. On August 29, 2022, at approximately 3:05 p.m., Bureau Compliance Officer (CO) Stephanie Ortiz conducted an opening conference with Ross Brown, Blake's Vice President of Development.

14. On August 30, 2022, CO Ortiz conducted a walkaround inspection of the worksite, made observations, took photographs, and interviewed employees.

15. As a result of the inspection, the Bureau issued a Citation and Notification of Proposed Penalty totaling \$16,868.00 ("Citation") to Blake's on February 16, 2023. See NMED Exhibit A.

### **CITED VIOLATIONS**

16. Paragraphs 1 through 15 above are hereby incorporated by reference.

17. The federal Occupational Safety and Health Standards, 29 CFR Part 1904 has been incorporated by reference into the New Mexico OHSR 11.5.1.16 NMAC.

18. Citation 1, Item 1 issued to Blake's on February 16, 2023, was classified as

a Serious violation, and provided for a proposed penalty of \$11,868.00 and states:

Employer failed to ensure employees of Blake's Lotaburger were protected against workplace violence due to shooting.

One feasible form of abatement is to train and instruct all affected employees in recognizing the workplace hazard associated with workplace violence. The Employer had developed the "Blakes Lotaburger Policy for Robberies" detailing a procedure in section 4.4.4, "What to do during a robbery," page 89-90.

19. Citation 2, Item 1 issued to Blake's on February 16, 2023, was classified as an Other-than-Serious violation, and provided for a proposed penalty of \$5,000.00 and states:

11.5.1.16 NMAC

29 CFR 1904.39(a)(1): Basic Requirement. Within eight (8) hours after the death of any employee as a result of a work-related incident, you must report the fatality to the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

Blake's Lotaburger failed to report within eight (8) hours of the robbery incident and workplace fatality that occurred on August 16, 2022. The incident was not reported to New Mexico OSHA until August 26, 2022.

#### **PENALTY**

20. Pursuant to NMSA 1978, § 50-9-24 (2017), an employer who has received a citation for a serious or other violation of any provision of the OHSA or any regulation or order promulgated pursuant to that act shall be assessed a civil penalty not to exceed twelve thousand six hundred and seventy-five (\$12,675), as adjusted for inflation, for each such violation.

21. The Bureau classified Citation 1, Item 1 issued to Blake's as Serious, with a proposed penalty of \$11,868.00.

22. The Bureau classified Citation 2, Item 1 issued to Blake's as Other-than-Serious, with a proposed penalty of \$5,000.00.

23. The total proposed penalties are \$16,868.00.

**STATUS OF CITATIONS**

24. Blake's has not provided adequate written certification of abatement for the cited violations.

**REQUEST FOR ORDER AFFIRMING CITATION AND PENALTY**

25. The Bureau respectfully requests that the OHSRC affirm all items in the Citation and Notification of Penalty as issued.

26. The Bureau respectfully requests that the OHSRC assess a penalty against Blake's in the amount of \$16,868.00, for the affirmed violations of the applicable regulations.

27. The Bureau respectfully requests other such further relief as the OHSRC deems appropriate.

Respectfully Submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT  
OFFICE OF GENERAL COUNSEL

*Andrew Knight*

---

Andrew Knight, Assistant General Counsel  
[andrew.knight@env.nm.gov](mailto:andrew.knight@env.nm.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Administrative Complaint was sent via by first class mail, return receipt requested, to the following party of record on June 6, 2023:

William J. Wahoff  
Steptoe & Johnson PLLC  
41 south High Street, suite 2200  
Columbus, OH 43215

*Andrew Knight*

\_\_\_\_\_  
Andrew Knight, Assistant General Counsel  
New Mexico Environment Department  
Office of General Counsel  
[andrew.knight@env.nm.gov](mailto:andrew.knight@env.nm.gov)

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau  
525 Camino de los Marquez, Suite 3  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734



## Citation and Notification of Penalty

To:  
Blake's Lotaburger  
AND ITS SUCCESSORS  
3205 Richmond Blvd. NE  
Albuquerque, NM 87107

**Inspection Number:** 1617889  
**Inspection Date(s):** 08/29/2022-08/29/2022  
**Issuance Date:** 02/16/2023

**Inspection Site:**  
206 N. Paseo de Onate  
Española, NM 87532

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the Environment Department, Occupational Health and Safety Bureau at the address shown above. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

**Posting-**The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference-** An informal conference is not required. However, at the request of an employer, affected employee, or representative of employees, the Bureau Chief or the Bureau Chiefs designee may hold an informal conference. At this conference any issues raised by an inspection, citation, proposed penalty, proposed petition for modification of abatement date or proposed petition for variance may be discussed. If you intend to request an informal conference, take care to schedule it early enough to allow time to contest after the informal conference discussion, should you decide to do so.

When the conference is requested by an employer, an affected employee or representative shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chiefs designee. When the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chiefs designee.

The request for an informal conference and the informal conference meeting shall not extend or modify in any manner:

- 1) an abatement date established in the citation;
- 2) the deadline for an employer to file a notice of contest;
- 3) any other filing deadline related to the citation; or
- 4) any matter pending before the bureau.

Once an employer files a notice of contest, a petition for modification of the abatement date, a request for a commission hearing, a petition for variance, or other filing with the Occupational Health and Safety Review Commission or the Environment Department, the opportunity for an informal conference is no longer available.

**Right to Contest-** You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Bureau Chief in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency. It is recommended that the Notice of Contest be filed via "Certified Mail".

**Penalty Payment-** Penalties are due within 15 working days of receipt of this notification unless contested. Make your check or money order payable to the Environment Department, Occupational Health and Safety Bureau. Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action -** For violations which you do not contest, you should notify the Occupational Health and Safety Bureau (OHSB) that each cited violation has been abated. To certify abatement, you should complete the "Description of Corrective Action Taken" box which follows each citation and sign the statement on the last citation page. You are not required to certify abatement if the compliance officer observed that abatement has occurred during the on-site inspection. The citation may indicate that you should submit additional documentation such as photographs, purchase orders, copies of written programs, etc. Failure to return all completed forms and documents to the Program Manager no later than 10 days after the abatement date may result in additional penalties.

You are also required to inform your employees about abatement activities by posting a copy of each document submitted to OHSB or a summary of the document near the place where the violation occurred. Documents must remain posted for 3 working days after submission to OHSB.

**Employer Discrimination Unlawful-** The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the Environment Department, Occupational Health and Safety Bureau at the address shown above.

**Notice to Employees -** The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Environment Department, Occupational Health and Safety Bureau at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



525 Camino de los Marquez, Suite 3  
Santa Fe, NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734

**Inspection #:** 1617889  
**Inspection Date(s):** 08/29/2022-08/29/2022  
**Issuance Date:** 02/16/2023

**Citation and Notification of Penalty**

**Company Name:** Blake's Lotaburger  
**Inspection Site:** 206 N. Paseo de Oate Espanola, NM 87532

Citation 1 Item 1      Type of Violation: **Serious**

11.5.1.13 NMAC

50-9-5.A NMSA 1978, the Occupational Health and Safety Act: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees, in that, employees were exposed to the hazard of workplace violence.

Employer failed to ensure employees of Blake's Lotaburger were protected against workplace violence due to shooting.

One feasible form of abatement is to train and instruct all affected employees in recognizing the workplace hazard associated with workplace violence. The Employer had developed the "Blakes Lotaburger Policy for Robberies" detailing a procedure in section 4.4.4, "What to do during a robbery," page 89-90.

PROOF OF ABATEMENT:

Date Corrected:

Describe Corrective Action:

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**March 15, 2023**  
**\$11,868.00**

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



525 Camino de los Marquez, Suite 3  
Santa Fe, NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734

**Inspection #:** 1617889  
**Inspection Date(s):** 08/29/2022-08/29/2022  
**Issuance Date:** 02/16/2023

**Citation and Notification of Penalty**

**Company Name:** Blake's Lotaburger  
**Inspection Site:** 206 N. Paseo de Oate Espanola, NM 87532

Citation 2 Item 1      Type of Violation: **Other-than-Serious**

11.5.1.16 NMAC

29 CFR 1904.39(a)(1): Basic Requirement. Within eight (8) hours after the death of any employee as a result of a work-related incident, you must report the fatality to the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

Blake's Lotaburger failed to report within eight (8) hours of the robbery incident and workplace fatality that occurred on August 16, 2022. The incident was not reported to New Mexico OSHA until August 26, 2022.

PROOF OF ABATEMENT:

Date Corrected:

Describe Corrective Action:

**Date By Which Violation Must be Abated:**

**March 15, 2023**

**Proposed Penalty:**

**\$5,000.00**

I attest that all corrective actions contained in this document are accurate and affected employees have been informed of the abatement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



525 Camino de los Marquez, Suite 3  
Santa Fe, NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734

**Inspection #:** 1617889  
**Inspection Date(s):** 08/29/2022-08/29/2022  
**Issuance Date:** 02/16/2023

**Citation and Notification of Penalty**

**Company Name:** Blake's Lotaburger  
**Inspection Site:** 206 N. Paseo de Oate Espanola, NM 87532

---

A handwritten signature in blue ink, appearing to read "R. Genoway", is written over a horizontal line.

Robert, Genoway, Bureau Chief

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau  
525 Camino de los Marquez, Suite 3  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734



---

## INVOICE

---

**Company Name:** Blake's Lotaburger

**Inspection Site:** 206 N. Paseo de Onate Espanola, NM 87532

**Issuance Date:** 02/16/2023

**Summary of Penalties for Inspection Number:** 1617889

Citation 1 Item 1, Serious	\$11,868.00
Citation 2 Item 1, Other-than-Serious	\$5,000.00

---

**TOTAL PROPOSED PENALTIES:** **\$16,868.00**

---

Please remit payment promptly to this office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: Environment Department, Occupational Health and Safety Bureau. Please indicate OHSB's Inspection Number (indicated above) on the remittance.

OHSB does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.



Robert, Genoway, Bureau Chief



Date