

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, July 27, 2023 – 1:00 p.m.

Present: Dennis P. Kavanaugh Chairman
Joseph M. Hennelly, Jr. Vice Chair (Telephonic)
Scott P. LeMarr Commissioner
D. Alan Everett Commissioner (Telephonic)
Maria Cecilia Valdez Commissioner

James Ashley Director
Gaetano Testini Chief Legal Counsel
Trevor Laky Legislative Affairs Chief/Public Information Officer
Renee Pastor Self Insurance
Lisa Padgett Labor Director
Melissa Spurgeon Labor Supervisor
David James Labor Investigator
Christina Sanchez Labor Investigator
Jennifer Cox Labor Investigator
Amanda Schaarr Labor Investigator
Jessie Atencio ADOSH Director
Anna Maria Stonerock ADOSH Admin
Kara Dimas Commission Secretary

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call was Lea Bartynski (Snell & Wilmer). Also in attendance on the telephone was Dana Little (Southwest Gas).

Approval of Minutes of July 13, 2023 Regular Meeting Minutes.

Commissioner Valdez moved to approve the Minutes of the July 13, 2023 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CNP22/23-1612 Mi Casa Tortilla LLC \$1,000

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Empire Southwest. LLC
2. Mayo Clinic
3. Southwest Gas Corporation
4. Walmart Associates, Inc.

Commissioner LeMarr moved to approve the items on the Consent Agenda and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2223-0109 Circle K Inc.

Ms. Padgett summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Padgett recommended that the Commission approve issuance of a Penalty in the amount of \$11,380.00 for violation of A.R.S. § 23-364 and a \$250.00 civil penalty for violation of A.R.S. § 23-374(F).

Chairman Kavanaugh asked if the retaliatory action was an unpaid suspension, and confirmed that Circle K's only response was they did not understand that there were any circumstances creating the violation.

Ms. Sanchez responded that Circle K did not provide evidence that the reason the Claimant could not work was related to something other than his suspension.

Chairman Kavanaugh asked if the Commissioners had any other questions.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$11,380.00 and \$250.00 civil penalty to Circle K Inc. Commissioner LeMarr seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

2. RT-2223-0114 Southwest Airlines Co.

Ms. Padgett summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Padgett recommended that the Commission approve issuance of a Penalty in the amount of \$13,650.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh asked if the Commissioners had any questions.

Commissioner LeMarr moved to approve issuance of a Penalty for Retaliation in the amount of \$13,650.00 to Southwest Airlines Co. Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Mr. Ashley noted that Ms. Little with Southwest Gas had joined the call and he noted for Ms. Little that the Southwest Gas request for self-insurance renewal was approved as part of the Consent Agenda.

Chairman Kavanaugh thanked Ms. Little for joining and complimented Southwest Gas for not denying any claims in 2022, which is a rare circumstance for employers in Arizona.

Ms. Little thanked that Commission and appreciated the Commission's help.

3. RT-2223-0120 Southwest Airlines Co.

Ms. Padgett summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Padgett recommended that the Commission approve issuance of a Penalty in the amount of \$16,950.00 for violation of A.R.S. § 23-364.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$16,950.00 to Southwest Airlines Co. Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Kavanaugh discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Mr. Atencio removed CNF Contracting Inc. and Ocotillo Construction Company, Inc. from today's Agenda for further evaluation.

M.A.G. Construction, Inc.
770 N Monterey St Ste B
Gilbert, AZ 85233

Site Location: 8780 E McDowell Rd
Scottsdale, AZ 85257
Inspection No: UR-2023-E7721-0102
Inspection Date: May 3, 2023

Unprogrammed Related
Years in Business: 37
Empl. Covered by Inspection: 18

SERIOUS – Citation 1 - Item 1 –

- a) 8780 E McDowell Rd Scottsdale Arizona, 85257: The employer did not develop and implement a written exposure control plan for an employee required to cut decorative stone without engineering controls or respiratory protection. 29 CFR 1926.1153(g)(1)
Div. Proposal - \$4,687.00 Formula Amt. - \$4,687.00
TOTAL PENALTY - \$4,687.00 TOTAL FORMULA AMT. - \$4,687.00

Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Kavanaugh checked if the Commissioners had any questions.

Commissioner LeMarr asked if the citation for not having a written exposure plan stemmed from the company not having a complete plan. Mr. Atencio agreed and explained where the company's plan fell short of the requirements.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Our World Energy AZ LLC
8716 W Ludlow Dr Ste 6
Peoria, AZ 85381

Programmed Planned
Years in Business: 7
Empl. Covered by Inspection: 4

Site Location: 5833 N 193rd Dr
Litchfield Park, AZ 85340
Inspection No: PP-2023-MN610-0033
Inspection Date: June 16, 2023

SERIOUS – Citation 1 - Item 1 –

- a) Rooftop at 5833 N 193rd Dr., Litchfield Park, AZ: Four employees were installing solar panels on a rooftop with a 5:12 pitch, and a fall distance of 10' 10" and were not using a fall protection system. 29 CFR 1926.501(b)(1)

Div. Proposal - \$8,036.00	Formula Amt. - \$8,036.00
TOTAL PENALTY - \$8,036.00	TOTAL FORMULA AMT. - \$8,036.00

Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Kavanaugh asked if this was a common circumstance that the inspectors see.

Mr. Atencio explained that while solar employers are aware of the requirement for fall protection this was a situation where the foreman or lead as agents of the company did not follow the training.

Commissioner LeMarr discussed the narrative for photograph #2 and if ADOSH went out to inspect a different job and concluded that inspection and then said these guys are working without fall protection on the roof and returned the same day.

Mr. Atencio noted this was a larger inspection for a residential housing track with different builders, they work with each builder based on the hazards of the programmed planned inspection and if they see anything else they have to open an additional file if they see anything else from a different builder.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Mr. Atencio also noted that because of the complaint, it was also a fall hazard. ADOSH addressed one fall hazard to finish up with and then went to the next.

Mr. Atencio informed the Commissioners about the Heat Stress State Emphasis Program. He noted ADOSH is active in a lot of inspections involved with the State Emphasis Program and expects employers to have water, rest and shade as the fundamental building blocks. They are also looking to make sure a plan or program is developed where acclimatization is considered with other strategies for best practices including training to recognize signs and symptoms of heat stress. They have had meetings with stakeholders about what is expected. It is not limited to just construction sites, but could include warehouses and restaurants if the air flow is insufficient.

Commissioner Valdez appreciated the program because we have people working out in the heat who are afraid to take a break because they might be disciplined; she is glad that the companies are realizing that it is to allow the workers to hydrate and rest in the shade.

Mr. Atencio also noted that some larger construction sites have emergency medical services on standby and practice the buddy system, but ADOSH is concentrating on the small sites.

Chairman Kavanaugh received an email from Eric Brooks from Federal OSHA complimenting Mr. Atencio and the agency on implementing this program. They are looking forward to seeing the results of the work and inspections and data that will be collected.

Mr. Ashley noted that because of the release of the SEP we are seeing employers reach out to the agency for assistance, because the written plans are key components along with provisions for water, rest and shade. Many employers are working with consultation and we value the opportunity to help employers come into compliance and offer that assistance.

Mr. Atencio noted there are a lot of folks that want to be prepared if they do have the inspection, or at least if they do not, they understand fully what they need to know and where they can go for some answers.

Mr. Ashley commented among the alliances and partnership programs, there is the Voluntary Protection Program (VPP), and we made the decision to set a good example and became VPP certified at the Phoenix building in 2019 with a one-year conditional approval to 2020 and then a three-year approval until 2023. Last week we had a VPP audit of the Phoenix building. The process included 80 formal and informal interviews and inspections throughout the building. We received a considerable amount of good feedback. The inspectors were Special Government Employees (“SGEs”) from VPP sites around the state. He recognized Allison Mendibles and Rafael Arellano from MI Windows and Doors, Ava Gembala from Cintas, and German Barron from Johns Manville Manufacturing in Tucson. They identified best practices like our safety huddles, 2-Minute Near Miss Reports, Threat Assessment Team, use of 5S principals, Maxpanda system, the use of QR codes, and the safety committee. They had a few improvement items for the maintenance team, including enhanced hazard recognition training for our external vendors and contractors and the need to further improve vendor and contractor adherence to all of the high safety standards we have. He was proud to report that the Phoenix ICA building was recertified for another three years.

Chairman Kavanaugh asked if the recertification included the Tucson building.

Mr. Ashley noted that while Tucson is also a VPP certified site it achieved that certification in 2022 and will be up for renewal in 2025.

Mr. Ashley noted that there are three bids for an engineer to determine the course of action for repairs to the walkway near the south entrance. Special Services is in the middle of pursuing that remediation.

Mr. Ashley and Ms. Dimas reminded the Commissioners of the Claims Seminar location for the next meeting and confirmed which Commissioners would be attending. The start time will be 1:30 after the lunch and a conference phone will be available.

Ms. Dimas confirmed Commission meeting dates through September 2023.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:55 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary