

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, October 26, 2023 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner (Telephonic)
	Gaetano J. Testini	Director
	Afshan Peimani	Chief Legal Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self- Insurance (Telephonic)
	Ruby Tate	Claims Manager
	Sherinda Little	Claims Supervisor
	Melissa Spurgeon	Labor Director
	Christina Sanchez	Investigations Supervisor
	Kimberly Gooby	Investigator
	Alissa Bodie	Investigator
	David Baugh	Investigator
	Christina Lasater	Investigator
	Mark Norton	ADOSH Director
	Brandt Smith	Whistleblower Supervisor
	Anna Maria Stonerock	ADOSH Admin
	Phil Murphy	ADOSH Assistant Director
	Laura Orrosco	ADOSH Compliance
	John Randolph	ADOSH Compliance
	Walter Pike	ADOSH Compliance
	Yvonne Borunda	Acting Commission Secretary

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Anne Ryman (ABC15); Paige Millan (Snell and Wilmer); Emily Bloom (ANM Roofing); Kris Leonhardt, Nermana Grinnan (Fisher Phillips); and James Countryman.

Approval of Minutes of October 12, 2023 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the October 12, 2023 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, 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.

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a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CSP23/24-0222 G R Taylor Enterprises Inc \$1,000
2. 2CNP23/24-1875 McCurdy Construction LLC \$1,000

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

1. Hyatt Hotels Corporation

c. Approval of Proposed Youth Employment Penalty.

1. YL-2324-0013 - Calzona Foods DBA Jack in the Box

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

Discussion regarding the Statutory Assessments for Calendar Year 2024.

Ms. Simpson presented an update to prior budget assessment. Ms. Simpson discussed the Assessment setting for FY25 budget. Under the new executive team, it has been determined that an additional 2.2 million should be requested to hire additional staff.

In the past eight years the Commission has been held to 216 Full Time Employees (FTE) by ADOA. The Legislation appropriated 236 FTE to the agency.

The ICA has taken on additional responsibilities due to new voter legislative initiatives. Proposition 206 added new programs to the Labor Department with earned paid sick time and earned paid sick time retaliation. With the addition of these programs, it has created more matters for the ALJ Division due to the appeals of the Labor Division.

The creation of ARS §§ 23-1061 (N) have added extra burdens for the Claims Division which require new procedures. The recent passage of A.R.S. §§ 23-934 creates a new fraud unit in the Legal Division will also require staffing of three new FTE's.

If approved this will bring up the appropriation to 24.2 million and the ICA is required to show evidence that the funds are available.

Vice Chairman Hennelly requested additional information for review. Ms. Simpson responded and will provide the required information. Chairman Kavanaugh and Sylvia discuss the positions and the rate setting.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2324-0008 - Holiday Lighting Company AZ, Inc

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$21,003.00 for violation of A.R.S. § 23-364.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$21,003.00 to Holiday Lighting Company AZ, Inc. Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

2. RT-2324-0012 - ASM Global Parent, Inc

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$14,850.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh moved to approve issuance of a Penalty for Retaliation in the amount of \$14,850.00 to ASM Global Parent, Inc. Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

3. RT-2324-0016 - Southwest Airlines Co

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$47,400.00 for violation of A.R.S. § 23-364.

Commissioner Everett moved to approve issuance of a Penalty for Retaliation in the amount of \$ 47,400.00 to Southwest Airlines Co. Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

4. RT-2324-0018 - Lost Dutchman Coffee Company

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$19,716.93 for violation of A.R.S. § 23-364.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$19,716.93 to Lost Dutchman Coffee Company. Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

5. RT-2324-0020 - Southwest Airlines Co

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$74,250.00 for violation of A.R.S. § 23-364.

Commissioner Everett moved to approve issuance of a Penalty for Retaliation in the amount of \$74,250.00 to Southwest Airlines Co. Chairman Kavanaugh seconded the motion. Chairman

Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

6. RT-2324-0022 - Southwest Airlines Co

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$10,650.00 for violation of A.R.S. § 23-364.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$10,650.00 to Southwest Airlines Co. Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

7. RT-2324-0023 - Southwest Airlines Co

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$21,450.00 for violation of A.R.S. § 23-364.

Commissioner Everett moved to approve issuance of a Penalty for Retaliation in the amount of \$21,450.00 to Southwest Airlines Co. Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

8. MW-2324-0005 - MEI Consulting

Ms. Spurgeon summarized the Labor Department's investigation into the Minimum Wage claim. Ms. Spurgeon recommended that the Commission approve issuance of a subsequent Civil Penalty in the amount of \$1,000.00 for violation of A.R.S. § 23-364.

Vice Chair Hennelly moved to approve issuance of a subsequent Civil Penalty for violation in the amount of \$1,000.00 to MEI Consulting. Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action of Resolution Appointing Custodian of Records.

Director Testini requested a Resolution appointing Ms. Scharf as a Custodian of Records in the Claims Team.

Commissioner Valdez moved to appoint Ms. Scharf as Custodian of Records and Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

1. WB-2023-0014 James Countryman vs McDonald's



SERIOUS – Citation 1 - Item 2 –

- a) N Sarival Ave and W Waddell Rd, Surprise AZ 85379 on roof: Two employees and a foreman were working on a residential low slope roof that was 10 feet above the ground and the employees had not been trained on fall protection. 29 CFR 1926.503(a)(1)

Div. Proposal - \$3,349.00

Formula Amt. - \$3,349.00

TOTAL PENALTY - \$6,698.00

TOTAL FORMULA AMT. - \$10,047.00

Mr. Norton discussed ADOSH’s inspection, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Kavanaugh checked if anyone would like to comment.

Emily Blum, Superintendent from ANM Roofing commented they have now updated their safety plan. Employees have been provided with new harnesses and safety equipment; safety meetings are being conducted.

Chairman Kavanaugh checked if anyone would like to comment.

Commissioner Everett asked if there was some abatement. Ms. Blum responded yes. Mr. Murphy also made comments that they received pictures of the abatement of the harnesses.

Commissioner Everett moved to amend the citation and proposed penalties. Because of the prompt attention to safety and correcting the protocol he suggested at 10% Good Faith Discount for a total of \$6,028.20. Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Brown & Brown Nissan Inc.  
dba AutoNation Nissan Tempe  
7755 S Autoplex Loop  
Tempe, AZ 85284

Complaint  
Years in Business: 10  
Empl. Covered by Inspection: 16

Site Location: 7755 S Autoplex Loop  
Tempe, AZ 85284  
Inspection No: CP-2023-T3633-0123  
Inspection Date: August 21, 2023

SERIOUS – Citation 1 - Item 1a –

- a) Spray area: A120-volt electrical outlet was located in the west wall of the building enclosing the spray area, in a location which was not screened off by the curtains of the spray area, and the outlet was not an approved type outlet for areas with readily ignitable residue or explosive vapors. 29 CFR 1910.107(c)(5)

Div. Proposal - \$7,813.00

Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 1b –

- a) Spray area: A five-gallon can of acetone that employees used for cleaning was located in the northeast corner of the spray area under the cleaning table. 29 CFR 1910.107(e)(2)

Div. Proposal - \$0.00

Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 1c –

- a) Spray area: The sprinklers in the spray area did not conform to the requirements of 1910.159, in that ceiling of the spray area structure installed in the work bay disrupted the discharge patterns of the existing sprinkler system installed in the bay. 29 CFR 1910.107(f)(1)

Div. Proposal - \$0.00

Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 2a –

- a) 7755 S Autoplex Loop, Tempe: Two employees were required to wear 3M brand half-face respirators during paint spraying operations, and a respiratory protection program had not been implemented. 29 CFR 1910.134(c)(1)

Div. Proposal - \$7,813.00

Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 2b –

- a) 7755 S Autoplex Loop, Tempe: Two employees were required to wear 3M brand half-face respirators during paint spraying operations, and a medical evaluation had not been conducted. 29 CFR 1910.134(e)(1)

Div. Proposal - \$0.00

Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 2c –

- a) 7755 S Autoplex Loop, Tempe: Two employees were required to wear 3M brand half-face respirators during paint spraying operations, and a respiratory fit tests had not been performed. 29 CFR 1910.134(f)(1)

Div. Proposal - \$0.00

Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 2d –

- a) 7755 S Autoplex Loop, Tempe: Two employees were required to wear 3M brand half-face respirators during paint spraying operations, and procedures for the proper use of respirators had not been established and implemented. 29 CFR 1910.134(g)

Div. Proposal - \$0.00

Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 2e –

- a) 7755 S Autoplex Loop, Tempe: Two employees were required to wear 3M brand half-face respirators during paint spraying operations, and a procedure for cleaning and disinfecting the respirators was not established. 29 CFR 1910.134(h)(1)

Div. Proposal - \$0.00

Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 2f –

- a) 7755 S Autoplex Loop, Tempe: Two employees were required to wear 3M brand half-face respirators during paint spraying operations, and employees had not been trained regarding respirator use. 29 CFR 1910.134(k)

Div. Proposal - \$0.00

Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 2g –

- a) 7755 S Autoplex Loop, Tempe: Two employees were required to wear 3M brand half-face respirators during paint spraying operations, and the employer did not establish and retain written information about the aspects of the program. 29 CFR 1910.134(m)

Div. Proposal - \$0.00

Formula Amt. - \$7,813.00

TOTAL PENALTY - \$15,626.00

TOTAL FORMULA AMT. - \$78,130.00

Mr. Norton discussed ADOSH’s inspection, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Kavanaugh checked if anyone would like to comment.

Vice Chair Hennelly commented that he appreciates the grouping of the citations.

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

First Response Roofing AZ LLC

1371 E. Indigo Street

Gilbert, AZ 85298

Site Location: 42709 Anne Ln  
 Maricopa, AZ 85138

Inspection No: CP-2023-R0175-0027

Inspection Date: May 4, 2023

Complaint

Years in Business: 1

Empl. Covered by Inspection: 5

SERIOUS – Citation 1 - Item 1 –

- a) Jobsite at 42709 Anne Ln Maricopa, AZ, Rooftop: Two employees were working at a height of approximately eight feet without fall protection.
- b) Jobsite at 42709 Anne Ln Maricopa, AZ, Rooftop: Two employees were working at a height of approximately 20 feet without fall protection. 29 CFR 1926.501(b)(10)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 2 –

- a) 42709 Anne Ln, Maricopa: Four employees were installing roofing tiles on a two story residential home above six feet without fall protection training. 29 CFR 1926.503(a)(1)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

TOTAL PENALTY - \$12,500.00

TOTAL FORMULA AMT. - \$12,500.00

Mr. Norton discussed ADOSH’s inspection, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Kavanaugh checked if anyone would like to comment.





Discussion and Action of Attorney Fee Petition. This agenda item may include discussion concerning the processing of attorney fee petitions and the reasonable hourly rates used in analyzing fee petitions.

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Fendon and Hernandez – Ms. Peiman presented the report for the Attorney Fee Petition.

Chairman Kavanaugh read the recommendation and asked if there were any questions. Chairman expressed to Chief Counsel Peimani great job in this report.

Vice Chair Hennelly moved to adopt the recommendation from the Legal Department for the Findings and Award granting attorney's fees in the amount of \$1,170.29 and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Borunda confirmed Commission meeting dates through December 2023.

Public Comment.

There was no public comment.

The meeting was adjourned at 2:59 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By   
Gaetano J. Testini, Director

ATTEST:

  
Yvonne Borunda, Acting Commission Secretary