

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, December 21, 2023 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner
	Gaetano J. Testini	Director
	Afshan Peimani	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Melissa Spurgeon	Labor Director
	Christina Sanchez	Labor Supervisor
	Christina Lasater	Labor Investigator
	Jennifer Cox	Labor Investigator
	Vincent Argana	Labor Investigator
	Phil Murphy	ADOSH Interim Director
	Anna Maria Stonerock	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Kavanaugh commented that Clear Sky Capital Real Estate Solutions DBA Raceway Car Wash will be continued to the next meeting.

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Stephanie Hefner (Snell and Wilmer); Julia Harry and Marc Mattfolk (Clear Sky Capital Real Estate Solutions DBA Raceway Car Wash); Cody Bennion (Hillyard, Inc.); and Alan Artunian (MVS Phoenix LLC). Also in attendance on the telephone, confirmed by roll call were Drew Catron and Zack Blakemore (Hillyard, Inc.).

Approval of Minutes of December 14, 2023 Regular Meeting Minutes.

Commissioner Valdez moved to approve the Minutes of the December 14, 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.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2324-0057 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 \$37,950.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh clarified, and Ms. Spurgeon confirmed that Southwest Airlines has not removed the letter of instruction from the file. Chairman Kavanaugh and Ms. Spurgeon also confirmed that this was the last Southwest Airlines file that is open at this time.

Chairman Kavanaugh commented that if the Commissioners approve the recommended penalty, this case would likely be consolidated with the other matters if Southwest Airlines protests the penalty. Ms. Peimani agreed.

Commissioner Everett moved to approve issuance of a Penalty for Retaliation in the amount of \$37,950.00 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.

2. RT-2324-0042 Vensure Employer Services, 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 \$17,100.00 for violation of A.R.S. § 23-364 and \$21,291.80 for lost wages as a result of the retaliation, for a total amount of \$31,291.80.

Vice Chair Hennelly moved to approve issuance of a Penalty for Retaliation in the amount of \$31,291.80 to Vensure Employer Services, 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.

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.

Hillyard, Inc.	Program Planned	
2377 North Stevens Boulevard	Years in Business:	104
<u>Flagstaff, AZ 86004</u>	Empl. Covered by Inspection:	48
Site Location:	2377 North Stevens Boulevard	
	Flagstaff, AZ 86004	
Inspection No:	PP-2024-EG419-0014	
Inspection Date:	September 27, 2023	

SERIOUS – Citation 1 - Item 1 –

- a) Warehouse: Two employees guided plastic onto the rotating Wulftec pallet shrink wrap machine, model WSML-150-S, and serial number 202115-5-5122, and were exposed to rotating and moving parts. 29 CFR 1910.212(a)(1)
- | | |
|----------------------------|---------------------------------|
| Div. Proposal - \$8,929.00 | Formula Amt. - \$8,929.00 |
| TOTAL PENALTY - \$8,929.00 | TOTAL FORMULA AMT. - \$8,929.00 |

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

Chairman Kavanaugh checked if anyone would like to comment.

Mr. Catron had no comments at this time.

Vice Chair Hennelly moved to approve the citation and proposed penalty 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.

MVS Phoenix LLC
3041 W Pierce St
Phoenix, AZ 85001

Site Location: 3041 W Pierce St
Phoenix, AZ 85001
Inspection No: CP-2023-TN976-0010
Inspection Date: September 20, 2023

Complaint
Years in Business: 20
Empl. Covered by Inspection: 6

SERIOUS – Citation 1 - Item 1a –

- a) Ice Tower: One employee was required to enter a permit-required confined space in order to get ice to fill up food trucks, that had not been identified as a permit required confined space.
29 CFR 1910.146(c)(1)
Div. Proposal - \$3,349.00

Formula Amt. - \$3,349.00

SERIOUS – Citation 1 - Item 1b –

- a) Ice Tower: One employee was required to enter a permit-required confined space in order to get ice to fill up food trucks without a written permit space program implemented in the workplace. 29 CFR 1910.146(c)(4)
Div. Proposal - \$0.00

Formula Amt. - \$3,349.00

SERIOUS – Citation 1 - Item 2 –

- a) Ice Tower: One employee was required to enter a permit-required confined space in order to get ice to fill up food trucks without having received permit required confined space training.
29 CFR 1910.146(g)(1)
Div. Proposal - \$3,349.00

Formula Amt. - \$3,349.00

TOTAL PENALTY - \$6,698.00

TOTAL FORMULA AMT. - \$10,047.00

Mr. Murphy discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Kavanaugh noted he had one request to speak.

Mr. Artunian commented that he is the owner of MVS Phoenix and thanked the Commission for the opportunity to speak. They are a small family owned business and wanted to clarify that nobody is allowed or permitted to go inside the ice machine, but he now understands that even a hand passing the doorway is considered entry., With the assistance of the compliance officer, the employer has posted the required confined space notices.

Chairman Kavanaugh thanked Mr. Artunian for the clarification.

Mr. Murphy noted he appreciated the compliance officer explaining the requirements and standards, and Mr. Artunian is correct, there are two ways to comply with the standard. One is to post permit required confined space notices on any permit required space or train your employees that they know that these are permit required confined spaces, this sounds like it has been abated with the signs.

Commissioner Everett asked Mr. Murphy to explain the permit required confined space and what it entails. Mr. Murphy explained it is a space that is not intended for continuous occupancy and large enough for a human to enter and to need a permit it has to contain some hazard. In this case the hazard is suffocation or crush from falling ice, which was the basis of the complaint.

Vice Chair Hennelly asked Mr. Murphy if the additional signage abated that particular issue. Mr. Murphy noted it would abate the one citation for identifying, and he has not seen the photographs on that part of abatement, but if they identified all holes as permit required confined spaces, multiple hatches, if they are all identified it would be considered as abated for that hazard.

Vice Chair Hennelly confirmed it would be Item 1a.

Commissioner Valdez, Mr. Murphy and Chairman Kavanaugh discussed grouping and the possible Good Faith Discount adjustment and what the FOM allows.

Commissioner Valdez moved to amend the citation and proposed penalties. Because of the prompt attention to safety and correcting the protocol she suggested a 25% Good Faith Discount for Citation 1, Item 1a to \$2,512.00 for a total penalty amount of \$5,861.00. Commissioner Everett seconded the motion. Chairman Kavanaugh commented he appreciated Mr. Artunian coming in and offering his comments and working with the compliance officer and understood the inspector's suggestions. 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. Dimas confirmed Commission meeting dates through February 2024.

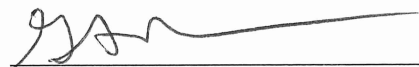
Public Comment.

There was no public comment.

The meeting was adjourned at 1:33 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Gaetano J. Testini, Director

ATTEST:



Kara Dimas, Commission Secretary