

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, October 10, 2019 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Self Insurance
	Jessie Atencio	ADOSH Director
	Larry Gast	ADOSH Supervisor
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Scot Butler (Undisclosed); Nat Carroll (Reyes Roofing); Alexandria Potocki-Nichols and Jack Nichols (Discrimination Complainants)(Telephonic); Shane Padilla and Shanlie Blair (Snell & Wilmer); and Iwen Hsu (Swift Transportation).

Approval of Minutes of September 19, 2019 Regular Meeting Minutes.

Approval of the Minutes of the September 19, 2019 regular meeting was postponed until a quorum who participated in the September 19, 2019 regular meeting is present.

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. 2CLP-18/19-0909 PMC Lawn Care and Landscape Service LLC \$1000
 2. 2C-18/19-0728 Galileo Construction LLC \$1000

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. DG Retail, LLC
 2. Federal Express Corporation DBA FedEx Express
 3. Ruan Transportation Management Systems, Inc.

Chairman Schultz commended FedEx for an experience modification of .68, especially considering the warehousing, driving, and lifting involved in their work.

Commissioner Krenzel moved to approve the items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona for the Claims Division, Awards Section.

Ms. Tate requested that Myketa Coker and Kisha Taylor be appointed as Special Assistants to the Industrial Commission to be authorized to issue Awards and Notices by the Commission.

Commissioner LeMarr and Ms. Tate discussed the background of Ms. Coker and Ms. Taylor.

Commissioner LeMarr moved to appoint Myketa Coker and Kisha Taylor as Special Assistants to the Industrial Commission of Arizona and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action regarding ADOSH Advisory Committee Appointment pursuant to A.R.S. §23-409.

Mr. Atencio provided a brief background for the Advisory Committee noting he is an Ex Officio member of the committee by statute.

Mr. Atencio, on behalf of ADOSH recommended the appointment of Anthony Dominguez, Robert Duffy and David Chavez to the Arizona Division of Occupational Safety and Health Advisory Committee. Mr. Atencio commented on Mr. Dominguez and Mr. Duffy's background and appointment for public entity positions, and Mr. Chavez's background and appointment for a mining and aggregate business position. They are all well noted in the community and Mr. Atencio has worked with all three of them.

Mr. Ashley noted that Mr. Dominguez and Mr. Duffy are very active in the community and Mr. Dominguez has toured the agency for the City of Chandler regarding the ICA's AMS deployment.

Chairman Schultz and Mr. Atencio discussed that Mr. Duffy was one of the first participants in the ADOSH PEPP Program and has been instrumental in the ADOSH events in the Yuma area.

Commissioner Krenzel moved to appoint Anthony "Tony" Dominguez, Robert Duffy and David Chavez to the Arizona Division of Occupational Safety and Health Advisory Committee effective immediately, Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

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

1. 17-9037-18 Potocki v. Risen Star Kennel Inc.
2. 17-9037-19 Nichols v. Risen Star Kennel Inc.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH determinations regarding discrimination complaints.

Mr. Atencio presented a summary of Ms. Potocki-Nichols' complaints, the ADOSH inspection and citation file; the employer's response, and the Division's investigation and determination of the matter. Mr. Atencio noted there was protected activity, adverse action and causal link and recommended that the Commission pursue the matter.

Commissioner LeMarr, Mr. Atencio and Chairman Schultz discussed how the chlorine was handled and applied, and the PPE available and being used.

Commissioner Krenzel and Mr. Testini discussed if the company was cited for not having workers' compensation insurance, and contrary to what was thought, there was coverage at the time of the incident. Commissioner LeMarr, Chairman Schultz and Mr. Ashley discussed that even if there was not work comp, the hospital would have treated them and the Special Fund ultimately, through several steps, would have been responsible.

Commissioner Krenzel and Mr. Atencio discussed that the hygiene inspection showed the chlorine tablets were being used correctly at the time of inspection.

Chairman Schultz commented that he thought the report was an excellent thorough investigation showing there was protected activity, employer knowledge, an adverse action, and a nexus between the adverse action and the complaint, combined with the other relevant information leads to the conclusion that the case has merit.

Chairman Schultz and Mr. Testini discussed that since the evidence was the same for both files it was possible to take a single action. Mr. Atencio read Mr. Nichols' file information into the record.

Chairman Schultz offered the co-complainants an opportunity to comment. Mr. Nichols noted everything was said.

Commissioner LeMarr made a motion that the Commission approve the conclusions of ADOSH, since the case appears to have merit and should be pursued by the Commission. Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

1. 17-9037-18 Potocki v. Risen Star Kennel Inc.
2. 17-9037-19 Nichols v. Risen Star Kennel Inc.

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

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

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

Forther Enterprises LLC dba Phoenix Skydive Center
3860 N Pinal Rd

Fatality/Accident
Years in Business:

10

Reyes Roofing, LLC, was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 29 CFR 1926.501(b)(1), which was contained in ADOSH Inspection Number 1271380, Citation Number 1, Item Number 1 and was affirmed as a final order on August 13, 2018, and abated on October 19, 2017, with respect to a workplace located at 15221 N Clubgate Dr., Scottsdale, AZ 85254.

Div. Proposal - \$3,000.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 2 - Item 1 –

- a) 15221 N Clubgate Dr., Scottsdale, AZ 85254: One employee working at heights greater than six feet and exposed to falls was not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. 29 CFR 1926.503(a)(1)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties.

Commissioner LeMarr and Mr. Atencio discussed the number of employees in the photographs who had fall protection available to use. One of the three employees did not have training.

Commissioner Krenzel and Mr. Atencio discussed if Reyes Roofing was part of the Roofer's Alliance. Chairman Schultz noted the larger roofing companies now mostly do their own training and have certified trainers on staff who train new employees at the time of onboarding. Smaller companies usually rely upon the roofing association training program and sometimes there is such a shortage of workers the training sessions are held monthly or could be delayed before people have an opportunity to be able to get trained.

Commissioner LeMarr and Mr. Atencio discussed the webinar that ADOSH has available. Mr. Atencio also noted they are considering producing a sticker for the hard hats which would be more identifiable.

Mr. Carroll noted he was hired after the fact and is helping the employer moving forward. He noted at this time all employees are trained according to the alliance standards and have implemented different accountability issues for performance. He is starting to make sure the foremen are accountable for their employees.

Chairman Schultz noted that Mr. Atencio provided information that all of the risks have been abated, and pleased to know part of the abatement was bringing on someone to create accountability and make sure people are trained and use the equipment provided.

Mr. Atencio noted that Mr. Carroll is also an alliance member who does the training at ARCA and is very involved with what is expected.

Commissioner Krenzel moved to amend the citation based on the company's hiring Mr. Carroll and putting the time and effort in to the cost of making sure people are trained correctly and abating, by proposing a 25% reduction for a total of \$3,375.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner LeMarr and Mr. Atencio discussed the FOM and stocking a roof from a supplier and the exception.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2019. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley noted that the VPP Audit will be November 6th, 7th, and 8th for the agency. He distributed a book prepared by the safety committee regarding everything that the agency has done to prepare for the VPP Audit. Mr. Atencio noted there will be five Special Government Employees "SGEs" from other VPP sites in Arizona.

Mr. Ashley has been asked to serve on a Senate Ad Hoc Committee to identify ways to prevent cancer exposure and risks for firefighters. He has offered the services of ADOSH Industrial Hygienists. He handed out statistics that the agency is able to track in the new claims system regarding firefighters and cancer presumption claims. The data will be available on the website and updated monthly.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley discussed the planning for the October 24, 2019 Tucson outreach trip.

Mr. Ashley noted two Industrial Commission Employee Association "ICEA" events for October 17, 2019 for Octoberfest lunch and October 31, 2019 Halloween decorating contest.

Ms. Dimas presented a retirement resolution for Don Jimenez, Elevator Inspector in the ADOSH Division in Tucson with twenty five years of state service.

The Commission cancelled the October 17th meeting since there were no pressing items and Ms. Dimas confirmed meeting dates through December 2019.

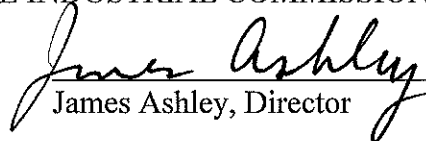
Public Comment.

Mr. Padilla commented that Mr. Fassett has been replaced by Ms. Blair who will be attending future meetings.

Ms. Hsu introduced herself and stated she was visiting Commission meetings in Arizona.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  _____
James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary