

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, September 5, 2024 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner
	Orion J. Godfrey	Commissioner
	Gaetano J. Testini	Director
	Afshan Peimani	Chief Legal Counsel
	Lisa Padgett	Deputy Director
	Charles Carpenter	Legislative Affairs Chief/Public Information Officer
	Renee Pastor	Self-Insurance (Telephonic)
	Melissa Spurgeon	Labor Director
	Christina Sanchez	Labor Supervisor
	Jennifer Cox	Labor Supervisor
	Kimberly Gooby	Labor Investigator
	Brian Hudson	ADOSH Director
	Anna Maria Stonerock	ADOSH Compliance
	Bethany Votta	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:01 p.m. In attendance, confirmed by roll call were Geneva Haber (Snell and Wilmer); Anne Ryman (ABC15); Paul Gerbi and Kara Stovall Diaz (Bright Coolidge Property, LLC.); Lilly Roseburrough (ASU student); and Lindsey Wheeler (Premier Risk Management).

Approval of Minutes of August 29, 2024 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the August 29, 2024 regular session meeting and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey 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 Requests for Renewal of Self-Insurance Authority.

1. Albertsons Companies, Inc.
 2. Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association (SRP)
- b. Approval of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties Less Than \$15,000.

1. UR-2024-JR339-0058 Crimson Commercial, LLC

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

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2324-0182 Arrowhead Valley Retirement Community LLC DBA Resort Lifestyle Communities, 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 \$13,650.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh asked if the Commissioners had any questions.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$13,650.00 to Arrowhead Valley Retirement Community LLC DBA Resort Lifestyle Communities, Inc. Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

2. RT-2324-0191 MMI Tank & Industrial 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 \$6,300.00 for violation of A.R.S. § 23-364 for the verbal warning and a Penalty in the amount of \$6,300.00 for violation of A.R.S. § 23-364 for the written warning for a total Penalty of \$12,600.00 and a \$250.00 civil penalty for non-compliance.

Chairman Kavanaugh asked if the Commissioners had any questions.

Vice Chair Hennelly clarified that while the Claimant was overheard indicating he was going to get his sick time one way or another, there was no evidence that he followed through on that statement and the warnings issued were based on use of sick time, not on some manipulation of sick time. Ms. Spurgeon confirmed.

Commissioner Everett moved to approve issuance of a Penalty for Retaliation in the amount of \$12,600.00 and a \$250.00 civil penalty to MMI Tank & Industrial Services, Inc. Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

a) Bartelt Machine #3: Employees were exposed to an unguarded drive shaft that projected out approximately 5 inches from the back of the machine. 29 CFR 1910.219(c)(4)(i)
 Div. Proposal - \$6,453.00 Formula Amt. - \$6,453.00
 TOTAL PENALTY - \$20,281.00 TOTAL FORMULA AMT. - \$31,805.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalty.

Chairman Kavanaugh indicated he had a request to speak from Paul Gerbi.

Mr. Gerbi reviewed what happened on the date of the incident, ADOSH inspection, at the closing they received a list of five issues and all repairs were completed by April 1st and cost a little over \$24,000.00 to get everything shored up and then took it plant wide. All requested documentation was submitted including the OSHA 300 logs. He noted they have done everything they can to make sure they communicated quickly and timely, jumped on all the issues that were brought up and apologized for any gap in communications and asked for forgiveness, they have not submitted the final paper that shows everything has been completed.

Chairman Kavanaugh noted the Commission appreciates his comments and the efforts the company has taken to minimize risks and their cooperation with the ADOSH staff.

Commissioner Valdez asked if the doors that were supposed to stop, have been replaced and corrected. Mr. Gerbi noted they put up light curtains so when they open a door, it shuts the machine off completely. They have also retrained everybody to know how to operate around those light curtains. They took everything very seriously and made sure not to delay because they do not want anyone else hurt. The OSHA 300 logs show their rates have gone down the last three to four years.

Commissioner Godfrey moved to amend the citation and proposed penalties due to the employer's proactive actions and timely actions suggested at 10% reduction for a total of \$18,253.00. Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

DCS Contracting, Inc. 11525 E Germann Rd Chandler, AZ 85286	Referral	
	Years in Business:	30
	Empl. Covered by Inspection:	11
Site Location:	N Hawes and E Ocotillo Rd Queen Creek, AZ 85142	
Inspection No:	RF-2024-RS480-0115	
Inspection Date:	March 26, 2024	

WILLFUL-SERIOUS – Citation 1 - Item 1 –

a) 19198 E. Ocotillo Rd, Queen Creek: Two employees were installing a coupling for a pipe in an excavation that was 5-7 feet deep, 3.5 feet wide and 12 feet long when the excavation collapsed and injured the employees. 29 CFR 1926.652(a)(1) *Per ADOSH Director as causal factor
 Div. Proposal - \$161,323.00 Formula Amt. - \$161,323.00
 TOTAL PENALTY - \$161,323.00 TOTAL FORMULA AMT. - \$161,323.00

SERIOUS – Citation 1 - Item 1 –

- a) Food Pantry Production Room: One employee was exposed to an amputation hazard while picking up balls of dough that were divided by a Konig Classic Rex Dough Divider/Rounder Machine, serial #03.0.6460, that was unguarded at the rear of the machine where the divided and shaped dough was discharged onto a conveyor system. 29 CFR 1910.263(f)(3) *Per ADOSH Director causal factor

Div. Proposal - \$16,131.00	Formula Amt. - \$16,131.00
TOTAL PENALTY - \$16,131.00	TOTAL FORMULA AMT. - \$16,131.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalty.

Chairman Kavanaugh noted he did not have a request to speak.

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

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through October 2024.

Mr. Carpenter commented last week was Labor Rights Week, it looks at the rights that employees have and are enjoying in this country and in this state. Representatives from the Labor Division, ADOSH and the Ombudsman's Office participate and attended the Mexican Consulate on Friday.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:57 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By 
Gaetano J. Testini, Executive Deputy Director

ATTEST:


Kara Dimas, Commission Secretary