

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, November 14, 2024 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner (Telephonic)
	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
	Melissa Spurgeon	Labor Director
	Christina Sanchez	Labor Supervisor
	Vincent Argana	Labor Investigator
	Brian Hudson	ADOSH Director
	Brandt Smith	Assistant ADOSH Director
	Taryn North	ADOSH Supervisor
	Victoria Medina	ADOSH Supervisor
	Mireya Gomez	ADOSH Compliance
	Anna Maria Stonerock	ADOSH Compliance
	Bethany Votta	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Geneva Haber (Snell and Wilmer); Lindsey Wheeler (Premier Risk Management); and Eddie O’Hair (The Paint Kings).

Approval of Minutes of November 7, 2024 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the November 7, 2024 regular session meeting 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.

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 Arizona Division of Occupational Safety and Health Proposed Citations and Penalties Less Than \$15,000.

1. UR-2024-JW184-0104 Aberrant Design & Construction Inc dba Acosta Development
2. RF-2024-T3633-0176 Copper State Bolt & Nut Company, Inc.
3. PP-2024-JW184-0111 DAXSO Construction LLC
4. CP-2024-JW184-0107 Jonty Corp. dba Yogis Grill #12
5. CP-2024-JW184-0099 Legacy Framing LLC
6. RF-2024-JW184-0103 Melendrez Construction Services, LLC
7. RF-2024-T3633-0167 Reddy Ice LLC
8. CP-2024-TM082-0050 Surprise Goodyear Car Care L.L.C.

Vice Chair Hennelly moved to approve the items on the Consent Agenda 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.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2425-0028 Bisbee Hospital Association

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 \$3,000.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh asked if the Commissioners had any questions.

Commissioner Godfrey moved to approve issuance of a Penalty for Retaliation in the amount of \$3,000.00 to Bisbee Hospital Association. 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 Sick Time Subsequent Civil Penalty.

1. ST-2425-0052 American Healthcare Solutions LLC

Ms. Spurgeon summarized the Labor Department's investigation into a violation of A.R.S. § 23-372(A) and A.R.S. § 23-375(C) for a prior Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon noted on May 23, 2024 the Labor Department assessed a civil penalty in the amount of \$250.00 for violating the same statute, which was not paid by the employer. On August 19, 2024 the Labor Department received another complaint against the employer for the same violation. The employer is still not in compliance with the statute. The Department recommended issuance of a subsequent Civil Penalty of \$1,000.00 for violation of A.R.S. § 23-372(A).

Commissioner Godfrey moved to approve the issuance of a Subsequent Civil Penalty in the amount of \$1,000.00 to American Healthcare Solutions LLC. Vice Chair Hennelly 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 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.

Hydraulic Repair and Supply LLC
 119 W Alturas St
Tucson, AZ 85705

Referral
 Years in Business: 7
 Empl. Covered by Inspection: 2

Site Location: 119 W Alturas St
 Tucson, AZ 85705
 Inspection No: RF-2024-T3633-0166
 Inspection Date: May 28, 2024

SERIOUS – Citation 1 - Item 1a –

- a) 119 W Alturas St, Tucson: Two employees operated the Toyota brand forklift, unknown model and serial number, which did not have a nameplate. 29 CFR 1910.178(a)(6) *Per ADOSH Director causal factor
 Div. Proposal - \$11,524.00 Formula Amt. - \$11,524.00

SERIOUS – Citation 1 - Item 1b –

- a) 119 W Alturas St, Tucson: Two employees operated the Toyota brand forklift, unknown model and serial number, which did not have a seatbelt. 29 CFR 1910.178(p)(1)
 Div. Proposal - \$0.00 Formula Amt. - \$3,457.00

SERIOUS – Citation 1 - Item 2 –

- a) Yard: One employee used a 54-inch long synthetic web sling to hang a hydraulic cylinder from the tine of the Toyota brand forklift, and the sling was not marked with the rated lifting capacity. 29 CFR 1910.184(i)(1)
 Div. Proposal - \$3,457.00 Formula Amt. - \$3,457.00

NON-SERIOUS –

- a) 119 W Alturas St, Tucson: An employee was hospitalized after a forklift accident on May 23, 2024, and the accident was not reported to the Arizona Division of Occupational Safety and Health. 29 CFR 1904.39(a)(2)
 Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00
 TOTAL PENALTY - \$15,981.00 TOTAL FORMULA AMT. - \$19,438.00

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

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

Commissioner Godfrey moved to approve the citation and proposed penalties as presented 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.

SERIOUS – Citation 1 - Item 5b –

- a) 3118 W Van Buren St, Phoenix: Three employees used an orange fiberglass extension ladder brand, model #, and serial # unknown to access and egress the roof, that was not secured from displacement. 29 CFR 1926.1053(b)(8)
 Div. Proposal - \$0.00 Formula Amt. - \$2,074.00

SERIOUS – Citation 1 - Item 5c –

- a) 3118 W Van Buren St, Phoenix: Three employees used an orange fiberglass extension ladder brand, model #, and serial # unknown to access and egress the roof, without having received ladder training. 29 CFR 1926.1060(a)
 Div. Proposal - \$0.00 Formula Amt. - \$2,074.00
- TOTAL PENALTY - \$17,284.00 TOTAL FORMULA AMT. - \$24,889.00

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

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

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

Reeis A/C, LLC dba REEIS
3525 East Corona Avenue
Phoenix, AZ 85040

Program Planned	
Years in Business:	6
Empl. Covered by Inspection:	1

Site Location:	1543 W Renee Dr Phoenix, AZ 85027
Inspection No:	PP-2024-JW184-0084
Inspection Date:	May 31, 2024

SERIOUS – Citation 1 - Item 1 –

- a) 1543 W Renee Dr, Phoenix: One employee performed maintenance on an air conditioning unit on the roof of a single-story residential roof, approximately nine feet above the ground and approximately 15 feet from the edge of the roof without a fall protection system in place. 29 CFR 1910.28(b)(13)(iii)(A)
 Div. Proposal - \$10,372.00 Formula Amt. - \$10,372.00

SERIOUS – Citation 1 - Item 2 –

- a) 1543 W Renee Dr, Phoenix: One employee performed maintenance on an air conditioning unit on the roof of a single story residential roof, approximately nine feet above the ground without having received adequate fall protection training. 29 CFR 1910.30(a)(3)
 Div. Proposal - \$10,372.00 Formula Amt. - \$10,372.00
- TOTAL PENALTY - \$20,744.00 TOTAL FORMULA AMT. - \$20,744.00

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

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

Commissioner Godfrey moved to approve the citation and proposed penalties as presented 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.

Surgenex, LLC
15444 North 76th Street C110
Scottsdale, AZ 85260

Complaint
Years in Business: 7
Empl. Covered by Inspection: 180

Inspection No: CP-2024-JW184-0085
Inspection Date: June 5, 2024
Site Location: 15444 North 76th Street C110
Scottsdale, AZ 85260

SERIOUS – Citation 1 - Item 1 –

- a) Loft area: Three employees used a stairway to access a mezzanine to get janitorial supplies approximately 10 feet six inches above the ground without a fall protection system in place.
b) Storage racks: One employee used a ladder to access a storage rack and organize boxes approximately seven feet and six inches above the ground without a fall protection system in place. 29 CFR 1910.28(b)(1)(i)
Div. Proposal - \$10,372.00 Formula Amt. - \$10,372.00

SERIOUS – Citation 1 - Item 2a –

- a) Quality systems department: Four employees worked at their desk while the emergency exit door closest to them was locked. 29 CFR 1910.36(d)
Div. Proposal - \$6,222.00 Formula Amt. - \$6,222.00

SERIOUS – Citation 1 - Item 2b –

- a) Tissue storage room: Two employees worked inside a room while the exit access from the room was approximately 22 inches wide. 29 CFR 1910.36(g)(2)
Div. Proposal - \$0.00 Formula Amt. - \$6,222.00

SERIOUS – Citation 1 - Item 3 –

- a) The Core: Two employees used corrosive chemicals such as; Spor-Klenz® Ready To Use Cold Sterilant to clean work surfaces without having access to an emergency shower. 29 CFR 1910.151(c)
Div. Proposal - \$10,372.00 Formula Amt. - \$10,372.00

SERIOUS – Citation 1 - Item 4 –

- a) Distribution area: Three employees ate lunch while sitting at the distribution table were employees also handled and packaged placentas and other potentially infectious materials. 29 CFR 1910.1030(d)(2)(ix)
Div. Proposal - \$10,372.00 Formula Amt. - \$10,372.00
TOTAL PENALTY - \$37,338.00 TOTAL FORMULA AMT. - \$43,560.00

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.

The Paint Kings, Inc. 2004 East 17th Street Tucson, AZ 85719	Referral-Employer Reported
Inspection No: RF-2024-MS021-0027	Years in Business: 24
Inspection Date: July 22, 2024	Empl. Covered by Inspection: 3
Site Location: 167241 S Paseo Las Teclas Sahuarita, AZ 85629	

SERIOUS – Citation 1 - Item 1 –

- a) 16724 S Paseo Las Teclas, Sahuarita: One employee fell while masking the trim of a second-floor window while standing on a roof that was 9'6" above the ground without a fall protection system in place. 29 CFR 1926.501(b)(13) *Per ADOSH Director causal factor
Div. Proposal - \$11,524.00 Formula Amt. - \$11,524.00

SERIOUS – Citation 1 - Item 2 –

- a) 16724 S Paseo Las Teclas, Sahuarita: One employee required to work 9'6" above the ground and a personal fall arrest harness was not provided to the employee. 29 CFR 1926.95(d)(1)
Div. Proposal - \$10,372.00 Formula Amt. - \$10,372.00
TOTAL PENALTY - \$21,896.00 TOTAL FORMULA AMT. - \$21,896.00

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

Chairman Kavanaugh noted he had a request to speak from Mr. O'Hair.

Mr. O'Hair, the President of The Paint Kings, stated the family-owned company has been in business since 1987. He reviewed the company's safety policy utilizing a third-party safety company to help them tailor their safety program. He talked about the incident and the tie off that was not provided by the builder. He noted when that is not available, the workers are instructed and trained to do a controlled access zone and have a safety monitor. He noted the training prior to the incident and provided documentation. He noted the employee slipped on stucco debris and lost his footing, they had a controlled access zone and safety monitor. When he went to the hospital, the hospital scheduled the surgery for the next morning and asked if he wanted to stay the night and he did, when they found out the next morning they reported the hospitalization. They followed their written policies and what he was instructed to do.

Chairman Kavanaugh and Mr. Hudson discussed Mr. O'Hair's comments about no tie offs and options for the right fall protection for the job and the injury did occur.

Commissioner Godfrey noted the efforts by the employer are commendable, and rarely does an employer come in and speak about all of the things they have done; however the counterpoints make it clear there was a violation of safety standards.

Chairman Kavanaugh, Commissioner Godfrey, Mr. Hudson and Vice Chair Hennelly discussed fall protection and the need for an assessment prior to getting on the roof, and the need for both citations, if it was addressed in the first citation.

Commissioner Godfrey moved to amend Citation 1, Item 1 and suggested at 15% reduction for employer efforts and because Citation 1, Item 2 is not based upon a proper application of the FOM to remove Citation 1, Item 2 from consideration for a total of \$9,795.00. 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.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through December 2024.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:53 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By: _____

Gaetano J. Testini, Director

ATTEST:

Kara Dimas

Kara Dimas, Commission Secretary