

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, March 28, 2024 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner
	Orion J. Godfrey	Commissioner
	Gaetano J. Testini	Executive Deputy Director
	Afshan Peimani	Chief Legal Counsel
	Lisa Padgett	Deputy Director (Telephonic)
	Charles Carpenter	Legislative Affairs Chief/Public Information Officer
	Renee Pastor	Self-Insurance (Telephonic)
	Melissa Spurgeon	Labor Director
	Christina Sanchez	Labor Supervisor
	David Baugh	Labor Investigator
	Kimberly Gooby	Labor Investigator
	Phil Murphy	ADOSH Interim Director
	Anna Maria Stonerock	ADOSH Admin
	Andy Campbell	Chief Administrative Law Judge
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:03 p.m. In attendance, confirmed by roll call were Anne Ryman (ABC15); Stephanie Hefner (Snell and Wilmer) and Amber Pappas (ADOSH Advisory Committee). Also in attendance on the telephone, confirmed by roll call were David Matthews, Ashley Lee, Anna Porter and Thomas Husband; (City of Phoenix); Claudia Chavez, Matthew Masters, Anthony St. George and Todd Gilbert (Town of Gilbert).

Approval of Minutes of March 7, 2024 Regular Meeting Minutes and March 14, 2024 Regular Meeting Minutes.

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Commissioner Valdez moved to approve the Minutes of the March 7, 2024 regular session meeting and March 14, 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.

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- a. Approval of Requests for Renewal of Self-Insurance Authority.
  1. City of Phoenix
  2. Town of Gilbert
  
- b. Approval of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties Less Than \$15,000.

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  1. CP-2024-JR339-0030 Juarez Contracting, Inc.
  2. UR-2024-TM082-0002 Mark-Taylor Residential, Inc.
  3. PP-2024-MB431-0021 Luis Antonio Benitez Ojeda & Maria Del Soccoro Leon Palomino, Husband and Wife Individually and on behalf of their marital community as husband and wife, DBA A Better Roofing

Chairman Kavanaugh confirmed that Mr. Juarez (Juarez Contracting, Inc.) had not joined the meeting noting he would have removed Juarez Contracting, Inc. if asked to do so.

Commissioner Everett moved to approve the items on the Consent Agenda 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.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2324-0084 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 \$67,350.00 for violation of A.R.S. § 23-364 and \$42,000.00 for continuing the violation for 280 days = \$109,350.00.

Chairman Kavanaugh confirmed with Ms. Spurgeon for the benefit of Commission Godfrey, the background of the claims noting the employer could have withdrawn the letter of instruction from the person's file while still contesting the citation and if they had chosen to do that it would have reduced the number of penalties being proposed today, there was no effort to mitigated damages.

Vice Chair Hennelly noted these continue to trouble him based on the penalty amounts. He asked about the status of the appeals of the other Southwest Airlines cases and was hoping for instruction from a court with respect to that at some point and wondering how close that is.

Ms. Peimani noted at this time it is still in litigation, Southwest Airlines filed a motion to dismiss and that was denied. It is continuing and still away from a decision.

Mr. Testini noted a motion to deconsolidate the 19 matters was filed.

Vice Chair Hennelly asked if during the course of this case or the other cases, if Southwest Airlines has raised an issue with the calculation of the penalty either based on the beginning or ending dates of that calculation or come up in the hearings.

Ms. Spurgeon noted it had not been brought up with their cases and would not know about the hearings. She also noted that included in their notices for each and every case that if they take action to correct it, while the statute requires the \$150.00 per day that the violation continues, they can show proof of their correction and mitigate their damages.

Vice Chair Hennelly noted he would like a legal opinion with respect to those issues.

Chairman Kavanaugh noted they could have the Chief Counsel provide some clarification with the request.

Commissioner Godfrey moved to approve the issuance of a Penalty for Retaliation in the amount of \$109,350.00 to Southwest Airlines Co. 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.

2. RT-2324-0081 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 \$66,450.00 for violation of A.R.S. § 23-364 and \$250.00 civil penalty = \$66,700.00.

Chairman Kavanaugh confirmed with Ms. Spurgeon that the letter of instruction was issued January 10, 2023 and the employee filed the complaint on January 5, 2024, there is a one year statute of limitations for people to file such a complaint.

Commissioner Everett moved to approve the issuance of a Penalty for Retaliation in the amount of \$66,700.00 to Southwest Airlines Co. 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.

3. RT-2324-0086 Raymond R. Corona, O.D., P.C.

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 \$20,200.52 for violation of A.R.S. § 23-364 and \$250.00 civil penalty = \$20,450.52.

Commissioner Valdez moved to approve the issuance of a Penalty for Retaliation in the amount of \$20,450.52 to Raymond R. Corona, O.D., P.C. 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 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.





that could be potentially another form of preventative measure to keep an employer from being fined. He asked if the hand rails were assumed acceptable.

Mr. Murphy noted the photo shows the ladder they used to access the roof, but it is working on top of the roof, 11'6" above the ground which was the fall protection issue.

Commissioner Everett asked if the difference between 1a and 2a, is one says you did not have fall protection and the other one says you did not have training. Mr. Murphy confirmed.

Commissioner Godfrey asked if photograph #4, it was hard to tell from the perspective but looks like a significantly large roof in which they were working on that A/C unit on top of it. Where were they supposed to use the fall arrest when they were on top of the large roof.

Mr. Murphy noted there was multiple ways to implement fall protection, they could provide railing on the outside edge of the roof, or could have anchor points with horizontal cables going across they can attach their personal fall arrest system to.

Commissioner Godfrey asked if the employees were trained in the safety measures or practices that they were trained on, and the safety tools were not made available to them.

Mr. Murphy noted the company had fall protection systems, but they are getting cited for not having fall protection training.

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.

#### Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Kavanaugh commented that the Commission did a national search for an ADOSH Director and received a strong response to that search. Candidates were first interviewed by a panel and five were chosen to be interviewed by the Commissioners. All five finalists were excellent candidates and the Commissioners voted unanimously for new Director Brian Hudson. Chairman Kavanaugh on behalf of the Commissioners thanked Mr. Murphy for guiding them through this period as Interim Director and very much appreciate his efforts. Mr. Hudson will start his new position next week.

Mr. Testini echoed the thanks to Mr. Murphy for his time as Interim Director, he has made a lot of progress and a lot of great things that will help the Division move forward.

Mr. Testini also recognized Amber Pappas, she is a member of the ADOSH Advisory Board and part of their job is to help design standards.

Chairman Kavanaugh thanked Ms. Pappas for her service noting it is an important role.

Ms. Dimas confirmed Commission meeting dates through May 2024.

#### Public Comment.

There was no public comment.

The meeting was adjourned at 1:43 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By   
Gaetano J. Testini, Executive Deputy Director

ATTEST:

  
Kara Dimas, Commission Secretary