

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, May 25, 2023 – 1:00 p.m.

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| Present: | Dennis P. Kavanaugh | Chairman |
| | Scott P. LeMarr | Commissioner |
| | D. Alan Everett | Commissioner |
| | James Ashley | Director |
| | Gaetano Testini | Chief Legal Counsel |
| | Trevor Laky | Legislative Affairs Chief/Public Information Officer |
| | Sylvia Simpson | Chief Financial Officer |
| | Renee Pastor | Self-Insurance (Telephonic) |
| | Lisa Padgett | Labor Director |
| | Melissa Spurgeon | Labor Supervisor |
| | David James | Labor Investigator |
| | David Baugh | Labor Investigator |
| | Christina Lasater | Labor Investigator |
| | Kara Dimas | Commission Secretary |

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call was Anne Ryman (ABC 15).

Public Hearing to accept comments and other information regarding the assessment under A.R.S. § 23-1065(F). During this hearing, the Commission may also discuss the assessment and information relevant to the levying of the assessment.

Ms. Simpson presented for the Assessment Hearing. Under Arizona Revised Statute § 23-1065(F), the Commission is authorized to levy a one-half percent assessment if the total annual reserved liabilities of the Special Fund for apportionment under ARS § 23-1065 (B) and (C) exceed six million dollars. The apportionment assessment has not been levied because the Special Fund has had an actuarial surplus.

As of the most recent actuarial study dated June 30, 2022, the Special Fund liability for apportionment had a confidence level of 80%, and the liability exceeds the \$6 million minimum required to levy the one-half percent assessment. As such, there is authority to levy the one-half percent assessment under ARS § 23-1065(F).

The decision to set the apportionment assessment rate will be discussed at a future Commission meeting and will be based on the current and projected financial condition and operating needs of the Special Fund. As of the most recent financial audit, June 30, 2022, the fund was operating with a surplus.

Chairman Kavanaugh commented that as we move towards discussing this issue later this year, he had some initial discussion with the Director and looking at the question of whether or not to consider an assessment for vocational rehabilitation purposes. In recent years with the advent of Full and Final settlements the number of carriers and self-insured offering vocational training to

injured workers has significantly decreased but an important function of the Special Fund is vocational rehabilitation. He would like to explore if there is anything we might be able to do to expand those services to injured workers under the assessment and this statute. No action will be taken today, but wanted to introduce for the record discussions regarding additional information from staff to look at what could be done, how it might work and might want to consider doing.

Chairman Kavanaugh concluded the public hearing.

Approval of Minutes of May 18, 2023 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the May 18, 2023 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Kavanaugh, Commissioner LeMarr, and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2223-0098, United Parcel Service, Inc.

Ms. Padgett summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Padgett recommended that the Commission approve issuance of a Penalty in the amount of \$1,000 for violation of A.R.S. § 23-364.

Commissioner LeMarr moved to approve issuance of a Penalty for Retaliation in the amount of \$1,000 to United Parcel Service, Inc. Commissioner Everett seconded the motion. Chairman Kavanaugh, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

2. RT-2223-0100, Circle K Stores Inc.

Ms. Padgett summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim for two violations. Ms. Padgett recommended that the Commission approve issuance of a Penalty in the amount of \$32,700 for the written warning violation; \$5,858 for the administrative leave violation and \$33,859.81 for the termination violation for a total of \$72,417.81 for violation of A.R.S. § 23-364.

Commissioner Everett moved to approve issuance of a Penalty for Retaliation in the amount of \$72,417.81 to Circle K Stores Inc. Commissioner LeMarr seconded the motion. Chairman Kavanaugh, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action regarding Minimum Wage – Civil Penalty.

1. MW-2223-0039, Outliers LLC DBA Mochilero Kitchen

Ms. Padgett summarized the Labor Department's investigation into the Minimum Wage Complaint. The anonymous complainant opted to waive their right to receive compensation and no minimum wage compensation is awarded. This employer previously received a \$250 civil penalty for hindering a retaliation claim. Ms. Padgett recommended that the Commission approve a \$1,000 civil penalty for a subsequent violation of § 23-364.

Chairman Kavanaugh discussed with Ms. Padgett how it was not common for employers to fail to provide any response to the Labor investigation unit, especially once the labor investigator makes contact. In this case, the employer acknowledges they received the information from the Labor Department and still failed to provide the requested documents. They have not paid the prior civil penalty which is currently in collections.

Commissioner LeMarr moved to approve issuance of a Penalty for Retaliation in the amount of \$1,000 civil penalty to Outliers LLC DBA Mochilero Kitchen. Commissioner Everett seconded the motion. Chairman Kavanaugh, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commissioners with the agency scorecard metrics. He reviewed the metrics for the Labor Department and Ms. Padgett commented on the wage claim program and the backlog that they have been able to eliminate and sustain across the board. Mr. Ashley also reviewed the Legal Division metrics and Mr. Testini commented on their targets.

Mr. Ashley announced the Golden Hard Hat award for the month of May was presented to Kathy Hill in the Legal Department. He acknowledged her work on creating and establishing standard work processes for Justice Court default judgements.

Mr. Ashley also announced the retirement of Lillian McKnight, the Administrative Services Officer II in the Administrative Law Division after 43 years.

Ms. Dimas confirmed Commission meeting dates through July 2023.

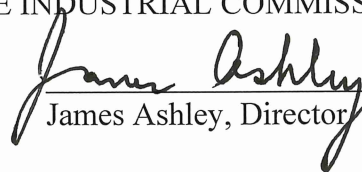
Public Comment.

There was no public comment.

The meeting was adjourned at 1:34 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary