

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, May 16, 2024 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	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
	David Baugh	Labor Investigator
	Sydney Standifird	Claims Supervisor
	Suzanne Crifase	Claims
	Brian Hudson	ADOSH Director
	Anna Maria Stonerock	ADOSH Compliance
	Andrew Dimas	ADOSH Compliance
	Jonathon Wright	ADOSH Compliance
	Ernesto Garcia	ADOSH Compliance
	Bethany Votta	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:06 p.m. In attendance, confirmed by roll call were Stephanie Hefner (Snell and Wilmer); Matt Arndt and Carlos Salcido (Universal Chain); James Jagelski (Five Guys Services LLC DbA Five Guys Roofing); Anne Snell (self); Bob Khun and Tom Safranek (Flagstaff United School District -Coconino); and Cynthia Cruz and Nelsen Cruz (Cruz Framing). Also in attendance on the telephone, confirmed by roll call were Lora Figgat and Steve Montero Corrales (Intel Corporation), Monique Handy (Pinnacle West Capital Corporation); and Stephanie Guthrie (OnTrac Logistics, Inc.).

Chairman Kavanaugh noted that OnTrac Logistics, Inc., which is on the Consent Agenda would be moved off of the Consent Agenda to be discussed separately at the request of Ms. Guthrie.

Approval of Minutes of May 2, 2024 Regular Meeting Minutes.

Commissioner Valdez moved to approve the Minutes of the May 2, 2024 regular session meeting and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez 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. Intel Corporation
2. Pinnacle West Capital Corporation

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-JW184-0053  | E W D, Inc. dba Roof Rite                       |
| 2. RF-2024-AD245-0016  | Fixation Systems L.L.C. DBA The Universal Group |
| 3. CP-2024-JW184-0045  | G.R.A.Z.A.K. Arizona, LLC dba GRAZAK Mechanical |
| 4. PP-2024-AD245-0010  | Garcia JVC Construction Corp                    |
| 5. CP-2024-TN976-0028  | Levinson Consulting LLC DBA Vision Flooring     |
| 6. RF-2024-TN976-0031  | Monrroy Plastering LLC                          |
| 7. CP-2024-AD245-0026  | Nackard Bottling Company DBA Nackard Pepsi      |
| 8. CP-2024-JW184-0070  | NPL Construction Co. dba TPL Construction Co    |
| 9. CP-2024-VM508-0025  | OnTrac Logistics, Inc.                          |
| 10. CP-2024-VM508-0041 | Panda Garden, Inc.                              |
| 11. CP-2024-TN976-0023 | Sierra Verde Companies, LLC                     |

Chairman Kavanaugh note that OnTrac Logistics, Inc. will be heard separately with the ADOSH Citations.

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

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2324-0105 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 \$10,650.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh asked if the Commissioners had any questions.

Vice Chair Hennelly moved to approve issuance of a Penalty for Retaliation in the amount of \$10,650.00 to Southwest Airlines Co. Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

2. RT-2324-0123 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 \$7,500.00 for violation of A.R.S. § 23-364.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$7,500.00 to Southwest Airlines Co. Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Suzanne Crifase

Ms. Standifird introduced Ms. Crifase and highlighted her background and experience. She requested a Resolution appointing Ms. Crifase as a Special Assistant with the Compliance Team.

Vice Chair Hennelly moved to appoint Ms. Crifase as Special Assistant and Chairman Kavanaugh seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez 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.

Chairman Kavanaugh commented that OnTrac Logistics, Inc. will be first since it was removed from the Consent Agenda.

CP-2024-VM508-0025

OnTrac Logistics, Inc.  
7400 W Buckeye Rd  
Phoenix, AZ 85043

- |   | Proposed Penalty |  |
|---|------------------|--|
| 1. Serious, Citation 1, Item 1  | \$6,250.00       |  |
| - 29 CFR 1910.219(d)(1): a) Van Line #1 Front End: Employees exposed to Talos Powered Conveyor system unguarded end pulley with a gap measuring 0.5 inches at widest point exposing rotating part.                                  |                  |  |
| - b) Van Line #1 Back End: Employees exposed to Talos Powered Conveyor system unguarded end pulley with a gap measuring 0.75 inches at widest point exposing rotating part.   |                  |  |
| - c) Van Line #2 Front End: Employees exposed to Talos Powered Conveyor system unguarded end pulley with a gap measuring 0.5 inches at widest point exposing rotating part.   |                  |  |
| 2. Non-Serious, Citation 2, Item 1  | \$ 0.00          |  |
| - 29 CFR 1910.136(a): a) Warehouse: Employees exposed to equipment and tasks that would necessitate the use of protective footwear including the use of a forklift, pallet jacks, moving vehicles, and transporting heavy packages. |                  |  |



- b) Trailer Yard: Employees exposed to equipment and tasks that would necessitate the use of protective footwear including the use of terminal trailers (yard goats) and delivery vehicles.

Mr. Hudson discussed the anonymous complaint, ADOSH's inspection, summarized the citations and proposed penalties.

Chairman Kavanaugh checked if Ms. Guthrie had any questions or comments for the record.

Ms. Guthrie noted OnTrac was caught by surprise to be here today. They got notice from local counsel of this item being included on today's Consent Agenda and there is actually not a matter in their file with the file number listed on the Consent Agenda. She was hoping to get a little more understanding of what this matter relates to. They had an inspection in December of 2023 and there was not a closing conference following that inspection, they received a document request via email without a reference number attached to it, and then responded to that document request later in December 2023. That was the last time they heard about the matter in December 2023. OnTrac wants to know how they are here today and also wondering about the closing conference.

Mr. Hudson noted according to the report from the Compliance Officer, a closing conference was completed on December 4, 2023 at 3:00 p.m. with Mr. Clarke, Mr. Montes, Mr. King and Mr. Rolling, and conducted inside Mr. Montes' office located inside the distribution warehouse facility in Phoenix, Arizona.

Ms. Guthrie asked if there was an address for the location.

Mr. Hudson noted he could provide an address for where the inspection took place, but did not have an address for the closing conference.

Mr. Hudson noted the address of the facility is 7400 W Buckeye Road, Phoenix, Arizona 85043.

Ms. Guthrie asked for the date of the closing conference again.

Mr. Hudson noted it was December 4, 2023 at 3:00 p.m.

Ms. Guthrie noted the response that they have to the document request was submitted on December 12, 2023, which appears to be after the date of the closing conference and looks the inspection was on December 4 for the initial walk around.

Mr. Hudson confirmed the date of inspection of December 4, 2023.

Chairman Kavanaugh asked if there could possibly be a request for records from the employer to come back to ADOSH after the inspection and closing conference?

Mr. Hudson noted he would have to find out more information on that, the inspection took place and looks like the closing conference took place on the same day.

Chairman Kavanaugh asked if there would be any issue for the Commission to defer this matter to a subsequent Commission Meeting just to make sure that the employer has the information on why the case is before them today? Noting the Commission as to watch the six months.



Mr. Hudson noted there should not be a problem.

Chairman Kavanaugh noted the other option would be approve the citation, obviously the employer could request an informal conference with you to sort out the issues that gave rise to the citations.

Mr. Hudson agreed.

Chairman Kavanaugh asked the Commissioners what their preference was.

Vice Chair Hennelly noted there is the May 30, 2024 meeting and could fit it in. He did not have a problem deferring to that date, but it would have to be that day.

Chairman Kavanaugh announced the case would be deferred to May 30, 2024.

Mr. Hudson and the Commissioners agreed. Chairman Kavanaugh thanked Ms. Guthrie for her comments and we will continue to work through the process.

Universal Chain of Arizona, Inc.  
400 S 99th Ave  
Tolleson, AZ 85353

Fatality/Catastrophe  
Years in Business: 30  
Empl. Covered by Inspection: 8

Site Location: 400 S 99th Ave  
Tolleson, AZ 85353  
Inspection No: FC-2024-AD245-0015  
Inspection Date: December 26, 2023

SERIOUS – Citation 1 - Item 1a –

- a) Asset Recovery Center Loading Dock: Two employees were unloading return trailers while on an outdoor loading dock 4' above the next lower level without a fall protection system in place. 29 CFR 1910.28 (b)(1)(ii)  
Div. Proposal - \$8,929.00                      Formula Amt. - \$8,929.00

SERIOUS – Citation 1 - Item 1b –

- a) Asset Recovery Center Loading Dock: Two employees were unloading return trailers while on an outdoor loading dock 4' above the next lower level without being trained on this fall hazard in their work area and how to recognize it. 29 CFR 1910.30(a)(3)(i)  
Div. Proposal - \$0.00                      Formula Amt. - \$8,929.00  
TOTAL PENALTY - \$8,929.00                      TOTAL FORMULA AMT. - \$17,858.00

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

Chairman Kavanaugh and Mr. Hudson clarified and confirmed that the fatality was not the result of a violation that the company is being cited for, but in the course of the investigation the violation was observed which resulted in the citations.

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

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

Cruz Framing LLC  
919 E Millet Ave  
Mesa, AZ 85204

Complaint  
Years in Business: 1  
Empl. Covered by Inspection: 9

Site Location: 919 E Millet Ave  
Mesa, AZ 85204  
Inspection No: CP-2024-TL481-0006  
Inspection Date: February 16, 2024

SERIOUS – Citation 1 - Item 1 –

- a) Lot Number 604: One employee was observed working on a residential low-sloped roof approximately ten feet above the ground without fall protection. 29 CFR 1926.501(b)(13)  
Div. Proposal - \$6,250.00                      Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 2 –

- a) Lot number 604: One employee was performing layout on a low slope residential roof on a new residential construction approximately 10' high without a qualified person implementing a fall protection system. 29 CFR 1926.502 (d)(15)(ii)  
Div. Proposal - \$6,250.00                      Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 3 –

- a) Lot number 593: One employee performed work on a low slope residential roof approximately 10 feet while using a Guardian Velocity Self Retracting Lifeline model and serial number unknown that was deteriorated and was not removed from service.  
b) Lot number 604: One employee performed work on a low slope residential roof approximately 10 feet while using a Werner Max Patrol Model # R410030LE Serial # H233190 with a fall indicator visible and was not removed from service. 29 CFE 1926.502(d)(21)  
Div. Proposal - \$6,250.00                      Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 4 –

- a) Lot number 604: One employee was working on a low slop residential roof approximately 10 feet above the ground without fall protection training. 29 CFR 1926.503 (a)(2)  
Div. Proposal - \$6,250.00                      Formula Amt. - \$6,250.00  
TOTAL PENALTY - \$25,000.00                      TOTAL FORMULA AMT. - \$25,000.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Vice Chair Hennelly asked if there was any consideration to grouping the citations.

Mr. Hudson did not see a relationship.

Chairman Kavanaugh did not have a request to speak.

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

Five Guys Services, LLC dba Five Guys Roofing  
1275 West Houston Avenue  
Gilbert, AZ 85233

Program Planned  
Years in Business: 11  
Empl. Covered by Inspection: 8

Site Location: 1216 S 7th Ave  
Phoenix, AZ 85007  
Inspection No: PP-2024-JW184-0050  
Inspection Date: December 6, 2023

SERIOUS – Citation 1 - Item 1 –

- a) Upper roof: Three employees were cleaning and coating the flat roof of a shopping plaza approximately 12 feet above the ground without fall protection. 29 CFR 1926.501 (b)(10)  
Div. Proposal - \$7,813.00                      Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 2 –

- a) Roofs: One employee wore a yellow Guardian body harness model # unknown serial # 300555 that had a broken impact indicator on the back strap that was not removed from service. 29 CFR 1926.502(d)(21)  
Div. Proposal - \$7,813.00                      Formula Amt. - \$7,813.00  
TOTAL PENALTY - \$15,626.00                      TOTAL FORMULA AMT. - \$15,626.00

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

Vice Chair Hennelly asked if the parapet that surrounded the area was inadequate in height.

Mr. Hudson confirmed that the parapet did not meet the fall protection requirement of at least 42"

Chairman Kavanaugh did not have a request to speak.

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

Flagstaff Unified School District - Coconino High School  
2801 N Izabel St  
Flagstaff, AZ 86004

Referral-Employer Reported  
Years in Business: 56  
Empl. Covered by Inspection: 2

Site Location: 2801 N Izabel St  
Flagstaff, AZ 86004  
Inspection No: RF-2024-AD245-0021  
Inspection Date: January 16, 2024

SERIOUS – Citation 1 - Item 1a –



- a) Welding Technologies Workshop: Two employees operated a Baileigh Industrial brand hydraulic sheet metal shear, model # SH-12010 and serial # 59147, to cut and reshape sheet metal without being trained on how to properly and safely operate the machine. A.R.S. 23-403.A

Div. Proposal - \$15,625.00

Formula Amt. - \$15,625.00

SERIOUS – Citation 1 - Item 1b –

- a) Welding Technologies Workshop: One employee was operating a Baileigh Industrial brand hydraulic sheet metal shear, model # SH-12010 and serial # 59147, to cut and reshape sheet metal without a guard in place to prevent body parts from being positioned underneath a blue 10' wide moving material hold-down apparatus. 29 CFR 1910.212(a)(1)

Div. Proposal - \$0.00

Formula Amt. - \$15,625.00

TOTAL PENALTY - \$15,625.00

TOTAL FORMULA AMT. - \$31,250.00

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

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

Mr. Khun, the Assistant Principal, was the Assistant Superintendent for the District for years. This particular machine does not come with a safety guard for the way it is. They got a hold of the company to see if one is made and they do not. That machine has been there for years and there is not a guard on it like that and he wanted to address that. They aggressively looked and the machine has been locked since then, but there is no guard on that particular machine.

Chairman Kavanaugh thanked Mr. Khun for his clarification and confirm it was from the manufacturer.

Vice Chair Hennelly asked how the employee is doing after the injury and if he was back to work.

Mr. Khun noted the employee did come back to work, he was out for four or five days and then came back. He was a retired teacher and helps out and taught industrial for a number of years.

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

J Wise Corp.  
5851 South Wilson Drive  
Chandler, AZ 85249

Site Location: N 7th Ave & McDowell Rd  
Phoenix, AZ 85003

Inspection No: RF-2024-JW184-0051

Inspection Date: December 8, 2023

Referral

Years in Business: 52

Empl. Covered by Inspection: 8

SERIOUS – Citation 1 - Item 1 –



- a) N 7th Ave & McDowell Rd: Three employees were cutting out a section of a pipe inside of an approximately 7' wide by 11' long by 5' 6" deep excavation that could reasonably be expected to contain a hazardous atmosphere and an atmospheric test was not conducted. 29 CFR 1926.65(g)(1)(i)  
Div. Proposal - \$0.00 Formula Amt. - \$4,687.00

SERIOUS – Citation 1 - Item 5 –

- a) N 7th Ave & McDowell Rd: Three employees were cutting out a section of a pipe inside of an approximately 7' wide by 11' long by 5' 6" deep excavation that was not protected from cave-ins. 29 CFR 1926.652(a)(1)  
Div. Proposal - \$7,813.00 Formula Amt. - \$7,813.00  
TOTAL PENALTY - \$35,939.00 TOTAL FORMULA AMT. - \$57,813.00

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

Chairman Kavanaugh noted he appreciated the City of Glendale referring this case for evaluation. You certainly discovered a number of conditions that were violating the standards.

Chairman Kavanaugh did not have a request to speak.

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

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through June 2024.

Mr. Testini thanked the Commissioners who were available for and participated in our Employee Appreciation Day last week. He thanked the Commissioners for being available and participating in our ICA Recognition Day on May 13, 2024.

Chairman Kavanaugh thanked Mr. Carpenter for all his hard work and putting the program together.

Public Comment.

There was no public comment.

The meeting was adjourned at 2:09 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Gaetano J. Testini, Executive Deputy Director

ATTEST:



Kara Dimas, Commission Secretary