

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, January 18, 2018 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self Insurance
	William Warren	ADOSH Director
	Brooks Rogers	Compliance Officer
	Richard Jackson	Compliance Officer
	Brett Steurer	Compliance Officer
	Jerell Viray	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Terry Fox with Arizona Association Lawyers for Injured Workers (“AALIW”) and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of January 11, 2018 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the January 11, 2018 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr abstained. 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 Proposed Civil Penalties Against Uninsured Employers.
  - 1. 2C17/18-0233 Arizona Frame & Fabrication, LLC
  - 2. 2C17/18-0296 West Motors LLC
  
- b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Regis Corporation
2. Mesa Unified School District No. 4.

Commissioner Orchard moved to approve the items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action regarding Establishment of Discount Rate for Calculating Lump Sum Commutations under A.A.C. R20-5-121(B).

Ms. Pastor discussed lump sum commutations and the process for updating the discount rate to be used in calculating the present value of an award under A.A.C. R20-5-121 and R20-5-122. Staff recommended setting the discount rate at 0.43% for calculating fixed period and permanent lump sum commutations, effective immediately. Chairman Schultz noted that the discount rate is calculated using a five-year average.

Commissioner LeMarr moved to approve a discount rate at 0.43% for calculating fixed period and permanent lump sum commutations under A.A.C. R20-5-121 and R20-5-122, effective immediately. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel 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 Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

<p>Century Painting, LLC          697 N. 6<sup>th</sup> St., Ste. 304  <u>Prescott, AZ 86301</u></p>	<p>Fatality/Accident          Years in Business: 20          Empl. Covered by inspection: 8</p>
<p>Site Location: 9785 N. Equine Rd.          Prescott, AZ 86305</p> <p>Inspection No: I4064-1272984</p> <p>Inspection Date: 10/24/2017</p>	

Mr. Warren summarized ADOSH's fatality investigation and reviewed the photographs. He noted that ADOSH was not recommending any citations.

Commissioner LeMarr, Mr. Jackson, and Mr. Warren discussed Century Painting's ladder safety program.

Chairman Schultz and Mr. Jackson discussed the hole in the drywall depicted in Photograph 3 and the mechanism by which the hole was made.

As recommended by ADOSH, the Commission took no action.

<p>Empire Metal Products, Inc.          2007 W. Mountain View Rd.  <u>Phoenix, AZ 85021</u></p>	<p>Referral          Years in Business: 13          Empl. Covered by inspection: 6</p>
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Site Location: 2007 W. Mountain View Rd.  
Phoenix, AZ 85021  
Inspection No: P2115-1268714  
Inspection Date: 10/06/2017

SERIOUS – Citation 1 - Item 1 –

a) Sheet and Metal department: A protective cover was not provided on the foot pedal for a Mittler Bros. Machine & Tool brand 24-inch bead roller, part number 202-24NV-K, to prevent unintended machine actuation due to falling objects, moving objects, or by employees in the area from accidentally stepping on the foot pedal that was in front of the machine. (29 CFR 1910.212(a)(1)).

b) Sheet and Metal department: One Mittler Bros. Machine & Tool brand 24-inch bead roller, part number 202-24NV-K did not have a guard on the point of operation where the two grove rolls created a hazard. (29 CFR 1910.212(a)(3)(ii)).

Div. Proposal - \$5,000.00	Formula Amt. - \$2,000.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$2,000.00

Mr. Warren summarized the citation and proposed penalty and reviewed the photographs.

Commissioner Orchard and Mr. Rogers discussed whether Empire Metal Products had abated the hazards.

Commissioner Orchard and Mr. Warren discussed the nature of Citation 1, Item 1(a) and the need to guard the foot pedal.

Chairman Schultz and Mr. Warren discussed the employer's inspection history and whether the employer had been previously cited for the same machine. Mr. Warren discussed the criteria for issuing a "repeat serious" citation.

Commissioner LeMarr and Mr. Warren discussed the difference between the standards cited on April 29, 2016 and the current violations.

Commissioner Orchard moved to approve the citation and proposed penalty as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

FedEx Supply Chain, Inc.  
777 S. 79<sup>th</sup> Ave.  
Tolleson, AZ 85353

Referral  
Years in Business: 1.7  
Empl. Covered by inspection: 3

Site Location: 777 S. 79th Ave.  
Tolleson, AZ 85353  
Inspection No: T1999-1257778  
Inspection Date: 08/25/2017

SERIOUS – Citation 1 - Item 1 – a) 777 S. 79th Ave., Tolleson, AZ 85353: The host employer did not establish an adequate energy control program that included the parts of an effective program, Lockout-tagout procedures, training, auditing, periodic inspections, and locks/devices in order to



Division to submit a piece for the next edition of the Advocate. Commissioner LeMarr, Mr. Ashley, and Mr. Warren discussed methods for distributing the Advocate.

Mr. Ashley discussed the prospects for a federal government shutdown, the impact a shutdown would have on the agency, and efforts to mitigate the impact of a shutdown. Chairman Schultz discussed how a shutdown might impact the ADOSH Consultation Division and operations of the Commission. Chairman Schultz extended his support for agency efforts to mitigate the impact of a shutdown and asked whether action by the Commission would be helpful. Mr. Porter recommended that, if the Commission was inclined to take action on the issue, that a separate agenda item be added to the next Commission meeting for further discussion and action. Commissioner LeMarr, Mr. Ashley, and Chairman Schultz discussed steps being taken to ensure that agency employees would continue to be paid in the event of a shutdown.

Mr. Ashley announced that a new working group will be established to address the new OSHA Silica standard. He noted that the working group will kick-off on February 13, 2018, at the Arizona Chapter of the Associated General Contractors.

Mr. Laky provided an update on House Bill 2047 and discussed considerations for adding an exemption for single-owner or two-owner corporations.

Mr. Laky discussed the recent increase to the minimum wage under Proposition 206 and related media coverage that involved Mr. Ashley which highlighted the ways in which the agency can be a resource for employers and employees.

Commissioner LeMarr, Mr. Laky, and Chairman Schultz discussed other proposed legislation that could impact the Commission. Mr. Ashley noted the Governor will be calling a special session of the legislature to address the opioid legislation.

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

Ms. Dimas confirmed Commission meeting dates through March 2018 and noted the upcoming Commission trip to Lake Havasu City on March 28 -29, 2018.

The Commissioners and Mr. Ashley discussed availability for upcoming Commission meetings.

#### Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 1:44 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By   
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary