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 Steuer
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.

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.

Century Painting, LLC
697 N. 6th St., Ste. 304
Prescott, AZ 86301

Site Location: 9785 N. Equine Rd.
Prescott, AZ 86305

Inspection No: 14064-1272984
Inspection Date: 10/24/2017

Fatality/Accident
Years in Business: 20
Empl. Covered by inspection: 8

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.

Empire Metal Products, Inc.
2007 W. Mountain View Rd.
Phoenix, AZ 85021

Referral
Years in Business: 13
Empl. Covered by inspection: 6
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. 79th Ave.
Tolleson, AZ 85353

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
prevent the unexpected startup or energization of equipment that could cause injury to an employee performing service or maintenance on the equipment. (29 CFR 1910.147(e)(1)).

Div. Proposal - $5,000.00  Formula Amt. - $2,500.00
TOTAL PENALTY - $5,000.00  TOTAL FORMULA AMT.- $2,500.00

Mr. Warren asked to table this agenda item for two weeks. No action was taken.

Renco, LLC dba Renco Roofing  Referral
11201 N. 23rd Ave., Ste. 200  Years in Business: 13
Phoenix, AZ 85029  Empl. Covered by inspection: 6
Site Location: 12596 E. Saddlehorn Tr.
Scottsdale, AZ 85259
Inspection No: P2115-1266138
Inspection Date: 09/26/2017

SERIOUS – Citation 1 - Item 1 –

a) 12596 E. Saddlehorn Trail, Scottsdale, AZ: One employee engage in roofing activities on a steep roof (5:12 pitch), was not protected from falling 12 Feet 4 1/2 inches to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard. (29 CFR 1926.501(b)(11)).

b) 12596 E. Saddlehorn Trail, Scottsdale, AZ: One employee engage in roofing activities at a height of 12 feet 4 1/2 inches was not trained to identify fall hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - $5,000.00  Formula Amt. - $1,250.00
TOTAL PENALTY - $5,000.00  TOTAL FORMULA AMT.- $1,250.00

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

Commissioner LeMarr, Mr. Warren, and Commissioner Orchard discussed the circumstances leading to the injury and the vendor exemption for fall protection.

Chairman Schultz and Mr. Warren discussed whether Renco Roofing participates in the Chairman’s Roofing Alliance.

Commissioner LeMarr moved to approve the citation and proposed penalty as presented and Commissioner Krenzel 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/or action regarding Industrial Commission goals, objectives and key initiatives for 2018. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed the State’s Preventing Inappropriate Behavior and Workplace Harassment training initiative, the agency’s efforts for each employee to complete the training, and the applicability of the training to members of state boards and commissions.

Mr. Ashley discussed the current edition of the ADOSH Advocate, an article in the Advocate regarding workers’ compensation insurance prepared by the Legal Division, and plans for the Labor
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