

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Telephonic Meeting  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, May 14, 2020 – 1:00 p.m.

Present: Dale L. Schultz	Chairman (Telephonic)
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
Scott P. LeMarr	Commissioner (Telephonic)
Steven J. Krenzle	Commissioner (Telephonic)
James Ashley	Director (Telephonic)
Gaetano Testini	Chief Legal Counsel (Telephonic)
Jason M. Porter	Deputy Director (Telephonic)
Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
Renee Pastor	Self Insurance (Telephonic)
Jessie Atencio	ADOSH Director (Telephonic)
Steven Black	ADOSH Compliance Officer (Telephonic)
Devyn Devers	ADOSH Compliance Officer (Telephonic)
Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call and those who self-identified were Diane Meyers and Greg Zinkiewicz (YRC, Inc.); Christine Lloyd, Terry Petko and Kristen Drew (City of Gilbert); Bryan Jeffries (Professional Firefighters of Arizona); Christine Glover (Snell & Wilmer); Allie Matthews and Emely Aguino (City of Tucson); Kyle Small (Tri Star for the City of Tucson); Joe Clure (Arizona Police Association); David Freeman and Carlos Cabrera (Nefab Packing); Marc Osborn (Kutak Rock); Mike Gardner (Professional Firefighters); Ellen Poole (American Property and Casualty Insurance Association); Lourdes Pena (Triadvocates)

Approval of Minutes of May 7, 2020 Regular Meeting Minutes.

Chairman Schultz postponed approval of the May 7, 2020 regular meeting Minutes.

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. 2CNP19/20-0351 Let's Help Movers \$5,000.00

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. YRC, Inc.

c. Discussion and Action of Application for Self-Insurance Authority.

1. Town of Gilbert

Chairman Schultz moved 3.c.1. (Town of Gilbert) to the regular agenda.

Commissioner Krenzel moved to approve the remaining items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz checked to see if YRC Inc. would like to make a comment since they were on the call. Diane Myers noted they were on the call in case there were any questions and to proceed as normal. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action of Application for Self-Insurance Authority.

1. Town of Gilbert

Chairman Schultz commented that the experience modification factor as recalculated by Ms. Pastor was 1.07 which looks more favorable and appreciated the fact that the town has engaged with the ADOSH Consultation Division to further improve their injury experience. Chairman Schultz and Ms. Pastor discussed the determination of the security deposit.

Kristen Drew thanked the Commission for considering their application and stated that Ms. Pastor has been wonderful to work with.

Commissioner Krenzel moved to approve the application for self-insurance authority by the Town of Gilbert and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr 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.

Mr. Atencio added that the Town of Gilbert and their self-insured program are actively seeking consultation and have been making a lot of strides to improve their safety and health program overall. Chairman Schultz noted it is great news and hopes they do join the PEPP program as well.

Harkins Phoenix Cinemas, L.L.C.  
10250 W McDowell Rd.  
Avondale, AZ 85392

Complaint  
Years in Business: 17  
Empl. Covered by Inspection: 6

Site Location: 10250 W McDowell Rd.  
Avondale, AZ 85392  
Inspection No: R2410 -1461455  
Inspection Date: 2/7/20

Mr. Atencio removed this item from the agenda for further review.





Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner Krenzel appreciated the grouping of the citations.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

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

Discussion and/or Action regarding Approval of Substantive Policy Statement: COVID-19 Workers' Compensation Claims.

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Mr. Testini is seeking a Resolution to allow the Legal Division to issue and publish a Substantive Policy Statement relating to the adjusting of COVID-19 Workers' Compensation Claims. While the Substantive Policy Statement is advisory and cannot impose additional requirements or penalties on regulated parties, a Substantive Policy Statement will provide guidance to entities that may have limited experience adjusting workers' compensation claims involving contagious diseases such as COVID-19. The Commission understands that the majority of carriers and self-insured employers are exercising due care in adjusting COVID-19 claims. We appreciate the good faith efforts of all stakeholders who are helping Arizona's injured workers navigate these challenging times. For the benefit of those on the phone, the Substantive Policy Statement excluding only the supporting citations and parentheticals was read.

COVID-19 Workers' Compensation Claims

Workers' compensation insurance carriers, self-insured employers, the Special Fund, and authorized claims processing representatives administering Arizona workers' compensation claims *may not* categorically deny COVID-19 claims. All claims must be reviewed and investigated in good faith. Claim denials related to COVID-19, like any claim denial, must be "well-grounded in fact" and "warranted by existing law". Like all workers' compensation claims, a denial of a COVID-19 claim must be based upon a reasonable investigation and must be based on facts and evidence relevant to the claim.

Chairman Schultz added that when considering the compensability of occupational disease claims, factors that need to be considered, include but are not limited to: the nature of the employment and the risk of contracting COVID-19, whether an identifiable exposure occurred at work, whether any identifiable exposure occurred outside of work, the timing between an identifiable exposure and the development of COVID-19 symptoms and the reliability of medical or other evidence that the work related exposure caused the disease.

Chairman Schultz thanked Mr. Testini and Mr. Porter for working on the Substantive Policy Statement.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

Vice Chair Hennelly moved to direct the Legal Department to issue the Substantive Policy Statement as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley recognized and thanked the Arizona Department of Health Services (ADHS). He noted this Saturday and the last couple of Saturdays a COVID-19 testing location for state employees was set up by ADHS. Employees could register for themselves and three other family or household members. This has been well received as a whole, and is in addition to the COVID-19 Testing Blitz locations taking place on Saturdays with dozens of locations around the Valley and around state where citizens can register for testing. He wanted to recognize the Department of Health Services for the work they have done and the services that they have provided.

Chairman Schultz stated it is a huge undertaking and a very aggressive program, and that being in healthcare it is extremely comforting to feel cared for and appreciated and really liked the idea that they extended it to family and others and a terrific program and proud of the department for doing that.

Ms. Dimas confirmed Commission meeting dates through July 2020.

Public Comment.

Chairman Schultz checked if anyone on the phone would like to comment. There was no public comment.

Mr. Ashley reminded everyone that the Substantive Policy Statement will be posted on the website and will be emailed to our Constant Contact distribution list with links to the website.

Commissioner LeMarr and Mr. Ashley discussed the Commission Meetings continuing to be telephonic for the near term.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 1:58 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley  
James Ashley, Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary