

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, November 8, 2018 – 1:00 p.m.

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

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Scott Gibson (Momentum Woodworks, LLC); Brenda Pinegar (Premier Risk Management) and Michael Fassett (Snell & Wilmer).

Approval of Minutes of October 25, 2018 Regular Meeting.

Commissioner LeMarr moved to approve the Minutes of the October 25, 2018 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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 Proposed Civil Penalties Against Uninsured Employers.
  - 1. 2C-18/19-0301 - Continuum Consulting, Inc. - for \$5,000.00
  - 2. 2C-17/18-0898 - One Shot Transportation LLC - for \$1,000.00
  - 3. 2C-17/18-0654 - Soto Express, Inc. - for \$1,000.00
  - 4. 2C-17/18-0882 - The Home Care Solution, LLC - for \$1,000.00
  
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  - 1. Medtronic, Inc.



- a) Spray Area: An employee was exposed to hazardous chemicals in the workplace including, but not limited to; pre-catalyzed lacquer, stain base, and primer without providing effective information and training. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$0.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 4c –

- a) Spray Area: Safety Data Sheets were not readily available to an employee who was exposed to hazardous chemicals in the workplace including, but not limited to; pre-catalyzed lacquer, stain base, and primer. 29 CFR 1910.1200(g)(8)

Div. Proposal - \$0.00

Formula Amt. - \$600.00

TOTAL PENALTY - \$2,700.00

TOTAL FORMULA AMT. - \$3,900.00

Mr. Atencio discussed ADOSH’s investigation and summarized the citation and proposed penalties.

Vice Chair Hennelly and Mr. Atencio discussed the open electrical panel and abatement.

Commissioner LeMarr and Mr. Atencio discussed the backlog and the timing deadline for the citation.

Mr. Gibson provided proof of abatement for the electrical panel which has been covered and locked, and a flammable proof storage container has been built in accordance with the suggestions made by the inspector.

Commissioner LeMarr, Mr. Gibson and Chairman Schultz discussed the material used for the storage container.

Chairman Schultz noted that the Commission likes to see the employer respond and correct the problems even before attending the Commission meeting.

Chairman Schultz and Mr. Gibson discussed the installation of an eyewash station that was not part of the initial inspection.

Commissioner LeMarr noted the Commissioners are interested in abatement and the fact that the items have been abated before the meeting is very favorable and the goal is to have workers go home safely. Commissioner LeMarr moved, based upon the company’s abatement efforts, to reduce the total proposed penalty by 25%, from \$2,700.00 to \$2,025.00. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

True-Built Construction, LLC  
6148 S Reseda St.,  
Gilbert, AZ 85298

Complaint  
Years in Business: 9  
Empl. Covered by inspection: 3

Site Location: 2629 E Verbena Dr.  
Phoenix, AZ 85048  
Inspection No: V4346 - 1333169  
Inspection Date: 07/11/2018

REPEAT-SERIOUS – Citation 1 - Item 1 –

- a) 2629 E Verbena Dr., Phoenix, AZ 85048: Three employees were exposed to a 8ft 4in fall while tearing off felt paper on a roof of a single level residential home and not utilizing fall protection. 29 CFR 1926.501(b)(10)

Div. Proposal - \$4,000.00	Formula Amt. - \$2,000.00
TOTAL PENALTY - \$4,000.00	TOTAL FORMULA AMT. - \$2,000.00

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

Commissioner LeMarr and Mr. Atencio discussed the dates on the photographs and abatement, and that the equipment was available at the time of the inspection but was not being used.

Chairman Schultz commented on the difficulty of rouge employees; here the employer has provided the training and certification and the foreman was on the roof with the proper equipment there onsite, they were using the ladder correctly but failed to use fall protection.

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

Discussion and/or Action regarding Approval of Substantive Policy Statement: Notification of Parties in Workers' Compensation Matters.

Mr. Testini provided background information regarding notification of parties in workers' compensation matters. He noted that with the new claims system it allows for the carrier to be notified and does not allow for a second party or third party administrators (TPAs) to be notified on behalf of the insurance carriers. Based upon the statutes and case law, the Commission's obligation is to notify the carrier as the party and this policy would clarify the Commission's legal obligation. This Substantive Policy will take effect with the launch of the new Claims System February 19, 2019, and notice will be sent to carriers and TPAs in November regarding the future change.

Vice Chair Hennelly and Mr. Testini discussed getting the information to the stakeholders and how it will impact the process. Mr. Testini noted the new system will have the most current identification.

Vice Chair Hennelly confirmed the point of the policy is to clarify the publication that we don't have the legal obligation to notify the TPAs.

Mr. Porter noted staff was preparing a letter to go to all stakeholders and targeting November 19, 90 days prior to the launch of the new system advising the community of the upcoming change and opportunity to prepare for it, shifting the obligation to the carriers to notify their TPAs.

Chairman Schultz recapped that this will not impact the requirements for the carriers to accept or deny claims within the stated statutory period and the obligation of the carriers.

Chairman Schultz and Mr. Porter discussed the Commission receiving notification of a claim and the process. The notification will go to the carrier or who they designate but will not be utilizing multiple addresses though the carrier can appoint and give access to TPAs and will not restrict carriers from using TPAs.

Vice Chair Hennelly noted it seems the Commission will be giving the appropriate additional notice with the letter and a lot of time to interested parties.

Commissioner LeMarr moved to direct the Legal Division to issue the proposed Substantive Policy Statement related to Notification of Parties in Workers' Compensation Matters. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Discussion and/or Action regarding Approval of Substantive Policy Statement: Life Table to be Used in Calculating Roth Credits.

Mr. Testini provided background information regarding calculating Roth Credits and the use of the Life Tables. He noted the life tables are adjusted from time to time based on demographic research and were last updated in 2003. The current life table available is The United States Life Tables, 2014 National Vital Statistics Reports, Vol. 66, number 4, August 14, 2017, Table 1, Life table for the total population: United States, 2014.

Chairman Schultz and Mr. Testini discussed the use of the most current Life Tables and if there would be any impact on awards, and the Roth Credits will not affect the size of the award but will affect the rate at which the credit the Commission has is recovered.

Vice Chair Hennelly moved to direct the Legal Division to issue the proposed Substantive Policy Statement related to Life Table to be Used in Calculating Roth Credits. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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 provided an update on the new Claims System and an upcoming follow up appearance before the Internet Technology Approval Committee (ITAC). Chairman Schultz noted the low cost and high quality of this project compared to his experience in other venues for something this large and complex. The Chairman thanked Mr. Ashley and the team for all of the work to bring this in on a timely manner.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley discussed the community outreach to Tucson on November 15, 2018.

Ms. Dimas confirmed Commission meeting dates through December, 2018.

Ms. Dimas noted the Commissioners were invited to the Administrative Christmas Lunch on December 3, 2018 and the ADOSH Thanksgiving Lunch on November 13, 2018.

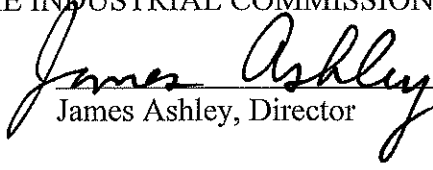
Public Comment.

Mr. Fassett noted he will be joining us in Tucson. There was no other public comment.


Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion and the meeting was adjourned at 1:47 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary