

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, April 27, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman (telephonic)
	David Parker	Vice Chairman (video conference)
	John A. McCarthy, Jr.	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Rachel Morgan	Legal Counsel
	Darin Perkins	Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:01 p.m. noting a quorum present. Ms. Oster was not able to attend. Also in attendance were Scot Butler, the agency's lobbyist; and Eda Barolli of Snell & Wilmer.

Approval of Minutes of April 21, 2011 Meeting

The Commission unanimously approved the Minutes of April 21, 2011 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action regarding ADOSH Discrimination Complaints

#10-55 Marc Mathews v. TUV Rheinland PTL - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Mathews. In his complaint, Mr. Mathews alleged that the company he worked for, TUV Rheinland, discharged him for notifying them of a potential health problem (mold) at their Roosevelt Tempe Arizona location. In response to the complaint, the employer stated that Mr. Mathews was terminated for refusing to return to work at the TUV Rheinland Roosevelt Tempe Arizona location after two independent environmental evaluations found the facility to be safe. Mr. Mathews was warned that failure to comply with the requirement to return to work at the facility would be considered a voluntary resignation and his employment with TUV would terminate. Mr. Mathews did not return to work at the facility and his employment was terminated.

Mr. Perkins presented a history of Mr. Mathews' employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was no evidence of a causal link between the protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Parker, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Scot Butler provided an updated legislative report and discussed HB's 2151, 2584, 2617 and SB's 1102 and 1264. He will provide a final report to the Commission in two weeks and

advised there are bills pending on the Governor's desk that could have an indirect impact on the agency, including the firearm omnibus bill.

Discussion & Action regarding ADOSH Discrimination Complaints
(Continued)

#10-64 Sergio Alvarez v. Rutherford Diversified Industries, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Alvarez. In his complaint, Mr. Alvarez alleged that he was discriminated against because he filed a workers' compensation claim. Specifically, that his employer refused to permit him to return to work after he was released by his doctor to go back to work. In response to the complaint, the employer stated that the decision to not reinstate Mr. Alvarez was based solely on insubordination due to the use of foul and abusive language and threats of violence.

Mr. Perkins presented a history of Mr. Alvarez's employment and chronology of events and responded to questions from the Commission. Mr. Perkins described that the protected activity included both the filing of the worker's compensation claim and contacting ADOSH (which contact occurred the day before Mr. Alvarez was terminated). He recommended that the Commission pursue the complaint as the evidence supported a causal link between the protected activity and adverse action. Following additional discussion about the treatment of similarly situated employees, whether Mr. Alvarez had a "right" to his position, and the time for filing a complaint in superior court, the Commission unanimously voted to pursue the complaint on motion of Mr. Parker, second of Mr. McCarthy. In response to a question from Mr. Parker, Mr. Perkins advised that ADOSH will bring the case back to the Commission for further discussion and reconsideration if additional relevant information is received.

#11-21 Ling Luan v. CyraCom International, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Luan. In her complaint, Ms. Luan alleged that she was suspended without pay in retaliation for bringing up the availability of bathroom breaks to her employer and filing a complaint with ADOSH regarding the same. In response to the complaint, the employer stated that Ms. Luan was suspended without pay resulting from performance issues and customer complaints.

Mr. Perkins presented a history of Ms. Luan's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was no evidence of a causal link between the protected activity and the adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Strickler.

Mr. Parker acknowledged the good job that Mr. Black does in preparing the files for Commission meeting. The Commissioners then discussed the form of reports and supported executive summary type reports.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-1584	A & M Pizza, Inc.
2C10/11-1267	Adley Adult Care Home, L.L.C.
2C10/11-1151	Impala Home Care, LLC dba Impala Home Care
2C10/11-1449	Phoenix Valley Senior Care, LLC

Rachel Morgan advised that with regard to the above listed employers, a compliance investigation confirmed that they were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), she recommended civil penalties of \$500.00 be assessed against employers #1584 and 1410 since they have recently obtained insurance. She further recommended civil penalties of \$1,000.00 be assessed against employers #1267, 1151 and 1449. Ms. Morgan provided information regarding each of the employers and responded to questions from the Commission. Following discussion, the Commission unanimously assessed civil penalties of \$500.00 against employers #1584 and 1410 and civil penalties of \$1,000.00 against employers #1267, 1151 and 1449 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion &/or Action regarding Budget and Operations of the Industrial Commission

Ms. McGrory stated that a preliminary report has been received from NCCI regarding deductible policies. When an analysis of the information is completed, a report will be prepared for the Commissioners.

Announcements and Scheduling of Future Meetings

Ms. McGrory advised that the agency has been selected by the State Bar of Arizona to receive the Hon. John R. Sticht Excellence in Disabilities Accessibility Award. Chairman Delfs suggested that this information be put out in a press release and be put on the agency's web site.

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, May 12th.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:55 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary