

State of California
California Occupational Safety and Health Appeals Board
Closed Session Agenda

Government Code § 11126 (a), (c)(3), (e) and (f)

for

Wednesday, March 6, 2024

9:30 a.m.

Sacramento, California

West Covina, California

&

Held on Zoom

To: Members of the California Occupational Safety & Health Appeal Board

From: J. Jeffrey Mojcher, Chief Counsel

Date: February 23, 2024

RE: Closed Session of the Board to be held on March 6, 2024

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), (e) and (f) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session. Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

Decisions of Administrative Law Judges:

(Written decision issued by an Administrative Law Judge. The Decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the Decision. The Board Members review the Decision and decide if they will reconsider the ALJ Decision on their own motion.)

1399613 BMC West, LLC

Petitions for Reconsideration:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1371294 KPRS Construction Services, inc.

Orders Dismissing Appeal:

- | | |
|---------|----------------------------------|
| 1621034 | America's Vinyl Exterior, Inc. |
| 1631420 | Bobby Gilbert |
| 1659030 | Closets by Design Inc. |
| 1504262 | Makai Solutions |
| 1652407 | Mr. Chau's Food Inc. |
| 1662666 | Sun-Maid Growers of California |
| 1575627 | Ultimate Internet Access, Inc. |
| 1616032 | Valley of The Sun Cosmetics, LLC |

Orders Denying Leave to File Late Appeal:

- | | |
|---------|--------------------|
| 1676932 | Hellman Properties |
|---------|--------------------|

Matters Pending Reconsideration:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters, or amends the Order or Decision being reconsidered.)

The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.

- | | |
|---------|--|
| 1431672 | A. Teichert & Son, LLC
<i>Whether the cited employer was in violation of lockout/tagout requirements.</i> |
| 1473644 | Amazon.com Services, LLC
<i>Whether the employer's training program was in compliance with the applicable safety order.</i> |
| 1113026 | Angelus Block Co., Inc.
<i>Whether Employer violated lock out/tag out requirements as alleged.</i> |

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- 1398352 Anheuser-Busch, LLC
Whether the evidence supports the holding that employer violated lockout/tagout requirements.
- 1568252 Arana Residential and Commercial Painting, Inc.
Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.
- 1466722 Bragg Investment Company, Inc.
Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.
- 1420923 Drill Tech Drilling & Shoring, Inc.
*Whether the Employer failed to enforce its IIPP as required.
Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.*
- 1497263 Hamilton Iron Works, Inc.
Whether the evidence supports a finding that employer violated section 4999, and that the citation was properly classified. And whether the penalty for Citation 1 (§ 342(a)) be reduced.
- 1233597 Hampton Tedder Electric (DOSH)
Whether the ALJ correctly decided that the Employer violated three high voltage safety orders.
- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.
- 1465354 Natural Alternatives International, Inc.
Whether the ALJ erred in dismissing the matter.
- 1465119 Sun Belt Rentals
Whether certain information accepted into evidence was inadmissible hearsay, and whether the evidence supports a finding that Employer violated sections 3203 and 3328, as alleged.
- 1475491 Sutter Bay Medical Foundation
Whether the employer failed to comply with COVID protections as alleged.
- 1609228 The Geo Group, Inc. dba Golden State Annex (3RD PTY PFR)
Whether the motion for third party status was properly denied.

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- 1488312 The Indiana Finish Line, Inc.
Whether the cited employer established procedures adequate to protect employees from COVID-19.
- 1486257 The Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.
- 1594663 Uber Technologies, Inc.
How Proposition 22 interacts with the Board's statutes and operative regulations.

Matters Pending Litigation:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

Superior Court:

1. Ashley Furniture Industries, 34-2017-800002750 (1016514)
2. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
3. Davis Development Company, 34-2020-80003373 (1226084)
4. Hill Crane Service Inc., 34-2021-80003744 (1135350)
5. USA Waste of California, Inc., 34-2022-80003841 (1384029)
6. American Fumigation Services, LLC, 22STCP04305 (1506586)
7. General Dynamics NASSCO, 37-2023-00024521 (1300984)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. Granite Construction Company, 34-2021-80003634 (1235643)
3. MWL Solutions, C097353, 34-2020-80003549 (1436014)
4. BMC West LLC, 34-2020-80003459 (1399613)
5. Hampton Tedder Electric, 34-2020-80003549 (1233597)
6. RND Contractors, Inc., CIVSB2119442 (1436785)

Other Items:

1. Categorizing the Board's DARs and Denials on the DIR website.
2. Superior Court cases that also involve or relate to appeals pending before the Board.

Lyft, Inc., 30-2023-01368387-CU-MC-CXC (1594664)

Uber Technologies, Inc., 30-2023-01330884-CU-JR-CXC (1594663)

Orders Of Administrative Law Judges:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1473477	A Vidovich Construction, Inc.
1687272	ABM
1669375	ACEMI Nursery, Inc.
1466230	Alberto Godoy
1552409	All Ready Farm Labor, Inc.
1697731	B&M Builders Inc.
1685165	Berkman Enterprises, Inc.
1632616	Blue Line Foodservice Distribution, Inc.
1702384	Brentwood Embroidery & Sewing, Inc.
1694618	Byers Enterprises, Inc.
1710706	California Department of Parks And Recreation
1649895	Carl Becker Construction, Inc.
1696665	Cedar Valley Manufacturing, Inc.
1681829	Circle Pizza LLC
1560079	Costco Wholesale Corporation
1573154	Costco Wholesale Corporation
1399221	CSI Electrical Contractors, Inc.
1600330	Designed II, LLC
1633366	DGA Services, Inc.
1691864	Don Vito Ozuna Food Corp.
1656879	Earthtone Construction, Inc.
1694032	Etchandy Farms, LLC
1678678	Everett Graphics, Inc.
1651496	Fashion Avenue, LLC
1628922	Foothill Unlimited Carwash Plans
1686936	Gemstone Jewelers
1661988	Grassi & Associates
1687113	Home Cooking Inc
1685621	Humason II Inc
1499025	Hundal Farms, Inc.

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1649064	Huong Ho
1590711	Jensen Landscape & Construction Company, LLC
1626829	Jesus Izarraraz Alejo Dba Landco Roofing
1617230	John D. & Jean L. Varni, Limited Partnership
1691836	Kirk Allen Pearson
1700476	Kormodiv Inc.
1684222	La County Fire Dept.
1699769	La Jolla Beach and Tennis Club Inc.
1555863	Lennar Homes of California, Inc.
1631644	LV Construction, LLC
1692043	Lyons Security Service, Inc.
1581563	M K Adams Painting
1681837	Managing Personnel Services
1619916	Market Demand Corp.
1683529	Marquez and Son Plumbing, Inc.
1708408	Marriott International, Inc.
1722168	McHale Sign Co Inc.
1596963	Midstate Construction Corporation
1665588	Montelongo, Inc.
1579547	National Ready Mix Concrete Company, Inc.
1673874	Oliveira Enterprises, Inc.
1672659	Platypus Painting Inc.
1647145	Posada SI LLC
1686887	Prieto's Roofing Removal Inc.
1651657	Priority Business Services Inc.
1699568	R. Tistic Painting
1507582	Ralph's Grocery Co.
1680275	Ramar Foods International Corporation
1667194	Restaurant Opportunities, LLC
1629997	Rival Well Services Incorporated
1588243	Rpm Transportation, Inc.
1701963	Sam's West, Inc.
1640356	Searles Valley Minerals, Inc.
1629750	Sergio Gomez Vasquez, An Individual
1615014	SGL Technic, LLC
1710403	Starbucks Corporation
1507958	Stater Bros. Markets #145
1689656	Sterling Environmental Corporation
1686891	Sun Valley Raisins, Inc., A California Corporation
1652853	Sunrun, Inc.
1483915	Sutter Bay Hospitals
1668752	The Lawson Roofing Co., Inc.
1688985	Tidal Foods, Inc.
1685100	Tri Star Foods, LLC
1706186	Trinity Perfect Construction, Inc.
1654826	U-Haul Co Of California

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1566326	USS-UPI, LLC
1595321	Vacuum Process Engineering, Inc.
1686008	Vagthol's Residential Care
1670180	Valley Properties
1171510	Wm. Bolthouse Farms, Inc.

Personnel:

(Issues regarding staff.)

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