

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

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

for

Wednesday, April 24, 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: April 12, 2024

RE: Closed Session of the Board to be held on April 24, 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.

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.)

There are no Decisions for review.

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.)

1666704 C H D S, Inc.

1355061 Republic Electric West, Inc. (ER PFR)

1355061 Republic Electric West, Inc. (DOSH PFR)

1575627 Ultimate Internet Access, Inc.

Orders Dismissing Appeal:

1685969 Camino Real Foods

1676577 Reliable Construction Service

Orders Denying Leave to File Late Appeal:

There are no Orders Denying Leave to File Late Appeal for review.

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 the authority provided in Labor Code sections 6620 through 6623.18.

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|---------|--|
| 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> |
| 1398352 | Anheuser-Busch, LLC
<i>Whether the evidence supports the holding that employer violated lockout/tagout requirements.</i> |
| 1568252 | Arana Residential and Commercial Painting, Inc.
<i>Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.</i> |
| 1399613 | BMC West, LLC
<i>Whether the Division produced evidence proving the violation, and whether the AJL correctly determined the credibility of a witness.</i> |
| 1466722 | Bragg Investment Company, Inc.
<i>Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.</i> |

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- 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.
- 1371294 KPRS Construction Services, Inc.
*Whether the employer violated section 1632 as alleged?
Whether the ALJ's ruling that the Division did not meet its burden
of proof regarding the employer's IIPP was correct.*
- 1415736 Los Angeles County Probation Dept.
*Whether the ALJ erred in reclassifying one citation from serious
to general.*
- 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.
- 1488312 The Indiana Finish Line, Inc.
*Whether the cited employer established procedures adequate to
protect employees from COVID-19.*

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- 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)
8. S.C. Anderson, Inc., 24WM000039 (1405107)

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. Discuss title 8, California Code of Regulations section 348, the Board's present regulation which adds five days to the time in which something must be done to account for mailing time.
2. Categorizing the Board's DARs and Denials on the DIR website.
3. 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 orders 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.)

1673330	AB Brand Fashion, Inc.
1560244	Agustin Ceballos-Baca
1718824	AJAY Hospitality Inc.
1610283	Andy's Roofing Co., Inc.
1697803	APG Roofing Inc.
1721559	Aranda's Tortilla Company Inc.
1642067	Arctic Glacier U.S.A., Inc.
1437250	Argonaut Constructors Inc.
1684214	Artsons Manufacturing Company
1636763	Augustin Miranda, An Individual
1603075	Barrett Business Services, Inc.
1670985	Bay Area Rapid Transit District - Richmond Yard
1666696	Bragg Investment Company, Inc.
1691824	Calavo Growers Inc.
1705463	California Greenhouses, Inc.
1524579	Ceja-Reyes, Inc.
1703257	Coastal Demo, Inc.
1555880	Cobra Performance, Inc.
1632272	Costco Wholesale Corporation
1698696	Costco Wholesale Corporation
1696327	Dana Kitchens & Associates, Inc.
1680813	Daniel Alejo
1728759	Doomsday Entertainment LLC
1536490	Drill Tech Drilling & Shoring, Inc.

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1435293	E. & J. Gallo Winery
1501912	Employbridge, LLC
1706621	Escarate's Tree Service
1672445	First Point, Inc.
1698767	First Point, Inc.
1680877	Flavorchem Corporation
1685706	G.L. Mezzetta, Inc.
1687262	Gat Airline Ground Support, Inc.
1662137	Ghiringhelli Specialty Foods Inc.
1671108	H & M Logging Inc.
1696556	Hathaway Dinwiddie Construction Company
1488964	Hi-Grade Materials Co.
1462983	Image Tree Service, Inc.
1687582	Intertex Inc.
1688364	J. Carr Contracting, Inc.
1697505	Kevin D. Woody Landscape Maintenance, Inc.
1703710	LCR Contracting, Inc.
1691636	Luster Cote, Inc.
1620878	Melinda Glenn
1668262	Monticelli Painting & Decorating Inc.
1661980	Nationwide Contracting Services Inc.
1546045	Newco Distributors, Inc.
1670722	Northern California Fire Protection Services
1711203	Nutri-Bon Distribution Co Inc.
1672452	Pacifica Linda Mar Inc.
1548273	Paganini Electric Corporation
1675096	Pallet Market Inc.
1507334	Perdue Foods, LLC
1686338	Pods Enterprises, LLC
1717288	Prime Healthcare Anaheim LLC
1686743	PUSD Mckinley School
1403360	R & A Roof Structures, Inc.
1513537	Ralph's Grocery Company
1665225	Restaurant Depot Inc.
1693851	RJG Construction Company, Inc.
1533628	Rokstad Power, Inc.
1709642	Rooftek & Waterproofing Systems, Inc.
1561973	Roscoe Moss Manufacturing Co.
1571278	Rose & Shore, Inc.
1688916	Rustic Bakery, Inc.
1710042	S Z Development, Inc.

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1721883	Saavan Hospitality Inc.
1699851	SBM Fumigation Inc.
1442834	Schultz Industrial Services, Inc.
1684437	Shed World LLC
1689283	Sid Ceballos Construction Inc.
1693976	Smith Packing, Inc.
1562596	Standard Lumber Company, Inc.
1662207	Staples Designers Services, Inc.
1648036	Strategic Materials Inc.
1691874	Strawberry Farms Golf Club
1633363	STS Ranch, LLC
1680672	T & R Construction Group
1626271	Tractor Supply Co.
1516285	Trademark Construction Co., Inc.
1699277	Trademark, Inc.
1708230	Tri Star Foods, LLC
1690887	Tyler Development Corporation
1610322	Uni-Tile & Marble, Inc.
1647621	Universal Plant Services of California, Inc.
1489846	Vellutini Corporation
1558448	Wall Panel Systems, Inc.
1580702	Walt Oxley Enterprises, Inc.

Personnel:

(Issues regarding staff.)

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.