

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

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

Wednesday, June 5, 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: May 24, 2024

RE: Closed Session of the Board to be held on June 5, 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.)

1498595 Western Oilfields Supply Company

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.)

1564732 Calvary Chapel of San Jose

1547995 Crane Development Corporation

Orders Dismissing Appeal:

1680266 Alpha Polishing Corporation

1610350 Baron HR

1601818 Dynamic Plastic

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted May 24, 2024

- 1490008 Elite Md, Inc.
- 1598803 Henkels & McCoy
- 1550739 Lekos Dye & Finishing, Inc.
- 1651741 Phillips 66 Company
- 1606385 U-Haul Co. of California, Inc.

Orders Denying Leave to File Late Appeal:

- 1685615 Deacon Construction, LLC
- 1626957 DS Fibertech Corp.

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.

- 1431672 A. Teichert & Son, LLC
Whether the cited employer was in violation of lockout/tagout requirements.
- 1473644 Amazon.com Services, LLC
Whether the employer's training program was in compliance with the applicable safety order.
- 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.
- 1399613 BMC West, LLC
Whether the Division produced evidence proving the violation, and whether the AJL correctly determined the credibility of a witness.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted May 24, 2024

- 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.
- 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.
- 1355061 Republic Electric West, Inc.
Whether fall protection requirements apply to the work. Whether the IEAD was established. Whether penalties were duplicative. Whether the Employer exercised reasonable diligence. Whether it was an error to reduce the classification of the violations and reduce the penalties.
- 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.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted May 24, 2024

- 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.
- 1486257 The Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.
- 1486176 Tutor Perini Corporation and O&G Industries, Inc.
Whether Employer committed a serious accident-related violation of section 3328, subdivision (a).
- 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. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
2. Davis Development Company, 34-2020-80003373 (1226084)
3. Hill Crane Service Inc., 34-2021-80003744 (1135350)
4. USA Waste of California, Inc., 34-2022-80003841 (1384029)
5. General Dynamics NASSCO, 37-2023-00024521 (1300984)
6. S.C. Anderson, Inc., 24WM000039 (1405107)

Appellate Court:

1. 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.)

1698670	1216 N Flores LLC
1662222	A & J Brothers Apparel Inc.
1579277	Affluent Staffing, LLC
1659601	Alard Engineering, LLC
1727338	Alfateers Service Center
1697191	Alston Construction Company, Inc.
1490294	American Builders & Contractors Supply Co, Inc.
1719135	American KGP Inc.
1656840	AMF Bowling Centers, Inc.
1580336	Amphastar Pharmaceuticals, Inc.
1562576	Arborwell LLC
1489413	Betts Company
1700390	Braggin Ragz, LLC
1679392	Cabrini Villas Homeowner Association
1665019	Cacique Foods LLC
1683984	California Conservation Corps
1616873	CalPortland Company
1709798	Canyon Rock Co., Inc.
1645117	Caravan Foods II, Inc.
1721019	Cats USA Pest Control Inc.
1552671	Circulating Air, Inc.
1598420	City of Los Angeles Department of Water and Power
1667844	City of Yuba City
1623563	Clark Construction Group California, LP

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted May 24, 2024

1393444	Concreative Construction Company
1706537	Concrete Value Corp
1515894	DCH California Motors Inc.
1505088	Delarosa Yerba Buena
1675238	Diamond Elite Labor Services, Inc.
1721024	Diamond Landscaping, Inc.
1627485	Dragados USA, Inc.
1529957	East Valley Hospital, LLC
1730364	Evergreen Recycling, LLC
1710034	Fetzer Vineyards
1482173	Foster Poultry Farms
1495041	Foster Poultry Farms, Inc.
1677647	Glazier Steel Inc.
1723555	Granite Construction Company
1712635	Griggs Wholesale Gardens, Inc.
1516816	Hayward Hills Operating Company LP
1598803	Henkels & McCoy
1689006	Holder Construction Group LLC
1718137	Interlink Properties, L.P.
1663528	J.T. AG, Inc.
1694366	Jae Management LLC
1630661	Jose Galvan
1666517	Kashi Keshav Investments LLC
1717030	Konoike-Pacific California, Inc.
1722057	LA's Best Afterschool Enrichment Program
1576594	Lactalis Heritage Dairy, Inc.
1651718	Los Angeles City Fire Dept. Station 67
1727998	Macy's Logistics LLC
1709911	Maribel Fashion, Inc.
1312682	Mark Lee and Yong Kay, Inc.
1662993	Marriott Hotel Services, Inc.
1721047	Modern Building, Inc.
1682188	Natsu Corporation
1553887	Netflix Production, LLC
1630524	Oakhurst Industries Inc.
1561428	Old Dominion Freight Line Inc.
1669085	Onyx Construction Services Inc.
1691286	Orchard Machinery Corporation
1658370	Pacific Choice Brands Inc.
1598860	Pacific Coast Elevator Corporation
1660529	Pacific Gas and Electric Company

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted May 24, 2024

1687258	Palomar Display Products, Inc.
1724573	Porter FRP, Inc.
1700383	Q. Fashion, Inc.
1673895	Quikserve Cajun Inc.
1697211	Seaside Steel, Inc.
1700391	Sew Fit, Inc.
1711608	Sound-Crete Contractors, Inc.
1557541	Southwest Airlines Co.
1670453	SRS Roofing & Solar, Inc.
1494063	Stanford Health Care
1687776	Starwest Botanicals, LLC
1665026	Sun Hill Properties, Inc.
1701857	Sure Forming Systems, Inc.
1688274	Swan Associates Inc.
1536712	TC Transcontinental Packaging Corp.
1666099	The Lyman Group Inc.
1547250	Thrifty Payless, Inc.
1719932	Tire Experts
1562483	Trees - LLC
1713058	United States Bakery
1696562	Universal Sheet Metal
1536238	UPS
1713879	V3 Electric, Inc.
1702909	Valley Pallet, Inc.
1168188	Village Management Services, Inc.
1689611	Wehah Farms Inc.
1691643	Wehah Farms Inc.
1528234	Western Metal Service
1658239	Wylatti Resource Management 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.