

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

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

for

Wednesday, August 21, 2024

9:30 a.m.

Sacramento, California

Alternate locations:

West Covina, California

&

Held on Zoom

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

From: J. Jeffrey Mojcher, Chief Counsel

Date: August 9, 2024

RE: Closed Session of the Board to be held on August 21, 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.)

1583201 Transitamerica Services, Inc.

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.)

1523238 Orange County Fire Authority

Orders Dismissing Appeal:

1514170 Andy's Landscaping & Tree Service, Inc.

1636640 Angelica Monique Ramirez dba AMR Contracting

Orders Denying Leave to File Late Appeal:

1733648 Albus & Associates Inc.

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- 1721636 Costa Mesa Healthcare Inc.
- 1691883 Dawit Goitom Fessehaye
- 1690885 Waterproofing and Roofing Solutions, Inc.

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.
- 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.
- 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.*
- 1499137 Employbridge Holding Company
Whether Employer violated IIPP requirements as alleged.

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- 1609228 Geo Group, Inc. dba Golden State Annex (3RD PTY PFR)
Whether the motion for third party status was properly denied.
- 1233597 Hampton Tedder Electric (DOSH)
Whether the ALJ correctly decided that the Employer violated three high voltage safety orders.
- 1488312 Indiana Finish Line, Inc.
Whether the cited employer established procedures adequate to protect employees from COVID-19.
- 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.*
- 1486257 Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.
- 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.
- 1475491 Sutter Bay Medical Foundation
Whether the employer failed to comply with COVID protections as alleged.
- 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.

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- 1498595 Western Oilfields Supply Company
Did the ALJ err by affirming a citation alleging that Employer did not guard a machine at its point of operation? And did the ALJ err by allowing an amendment to the citation so the Division could assert an alternate theory?

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)
7. Angelus Block Co., Inc., CIVSB2417796 (1113026)
8. Hamilton Iron Works, Inc., 24WM000100 (1497263)

Appellate Court:

There are no cases currently filed with the Appellate Court.

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.)

1662218	2N Clothing, Inc.
1488957	Able Sheet Metal, Inc.
1538332	Albeco, Inc.
1647852	Alliance Ground International LLC
1696842	Altman Specialty Plants, LLC.
1487399	Anaheim Healthcare Center, LLC
1514170	Andy's Landscaping & Tree Service, Inc.
1683541	Asacrete, Inc.
1694103	Bert's Foreign Car Service, Inc.
1663130	Brian Baker & Lora Baker
1698773	C3 Construction Group, Inc.
1688136	CBC Framing, Inc.
1752676	Cesar Mendoza Electric, Inc.
1666174	Chrisp Company
1729200	City of Alameda - Public Works
1516429	Cobalt Power Systems
1721636	Costa Mesa Healthcare, Inc.
1578945	County of San Bernardino Children & Family
1547995	Crane Development Corporation
1649699	Craven Landscaping, Inc.
1685873	Curtis & Sons Door, Inc.
1647111	Dana Butcher Associates
1637904	Diaz Plastering, Inc.
1760321	Dryco Construction, Inc.
1719966	Genesis Plumbing, Inc.
1732015	Giuliano-Pagano Corporation
1611583	Glendale & Manhattan Motel, Inc.
1718421	Global Modular, Inc.
1702817	Gonzalez Farm Labor Services, LLC
1696101	Hilmar Cheese Company
1667796	Izurieta Fence Company, Inc.
1508393	Kindred Hospital Los Angeles
1575405	Kindred Hospital South Bay
1726447	Kisco Senior Living LLC
1498721	KND Development 54, LLC
1629043	L3 Investment Holding, Inc.
1612671	LAPD - Evidence & Property Management Division
1544985	Los Altos Food Products, LLC
1623704	Lowe's Home Centers, LLC
1689229	Marriott Hotel Services, LLC
1640600	MI Casita Salvadoreña Restaurant, Inc.

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1604360	MJD Concrete Works, Inc.
1505831	Mountain F Enterprises, Inc.
1506810	Mr. Crane, Inc.
1677210	Otay Water District
1547001	OWB Packers, LLC
1676073	Precision Coil Spring Company
1735602	Professional Asbestos and Lead Services LLC
1684479	R.O.M. Investments, Inc.
1504399	Ralph's Grocery Company
1733045	Rancho Valencia Resort Partners LLC
1642653	Raymer Construction Inc.
1488201	Rehabilitation Center of Santa Monica Operating
1716421	Remo, Inc.
1570992	Riverside County Sheriff Department
1696955	Riverside County Sheriff's Department
1721451	S & K Plating, Inc.
1704565	SMI Development Group, Inc.
1622131	Solar-Klean, LLC
1538506	Spectrum Construction Group, Inc.
1475440	Sutter Bay Hospitals California Pacific Medical
1706525	Sysco Corporation
1707274	Sysco San Francisco, Inc.
1520771	Taylor Farms Retail, Inc.
1507443	The Vons Companies, Inc.
1720154	Timberline
1512415	Trapac, LLC
1725262	UC Davis Cahfs Veterinary Department
1637197	United Airlines, Inc.
1526892	Universal Dust Collector Mfg. & Supply Corp
1613327	Universal Iron Works, Inc.
1740985	Universal Wood Moulding, Inc.
1694314	Ventoux Corporation
1706640	Walmart, Inc.
1665736	Walmart, Store #1840
1700384	Westin Style, Inc.
1437406	Wright Tree Service of the West, 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.