

State of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on May 21, 2025
Sacramento, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Executive Order
Kerry Lewis, Presiding Administrative Law Judge
Sam E. Lucas, Presiding Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Kevin Reedy, Administrative Law Judge
Rheeah Yoo Avelar, Administrative Law Judge
Weiru Wang, Administrative Law Judge
Aaron Jackson, Chief Counsel
Jeffrey Mojcher, Chief Counsel Emeritus
Vincent Mersich, Staff Counsel
Karen Halbo, Staff Counsel
Scott Pease, Operations Manager
Maria Rios, Legal Analyst
Beth Reiken, Executive Secretary
Ina Fitzgibbon, Office of Director, DIR
Denise Cardoso, Assistant Chief Counsel, DOSH
Tuyet Tran, Attorney Supervisor DOSH
David Wiseman, Staff Counsel, Cal Fire
Fred Walter, Attorney, Conn Macie Carey LLP
Kita Banks, Staff Counsel, CalFire
Lisa Prince, The Prince Firm
Nivitha Mavuluvi, Stanford Student
Rahul Ajmera, Stanford Student
Kunal, Stanford Student
Megan Woo

Notice of remote attendance:

As required by Government Code Section 11123.5, subdivision (d), notice is hereby given that Board member Marvin P. Kropke will be participating remotely pursuant to Government Code Section 11123.2, subdivision (j), paragraph (2), and Board member Judith Freyman will be participating remotely pursuant to Government Code Section 11123.2, subdivision (j), paragraph (1).

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Request for remote attendance:

Member Marvin Kropke made a motion requesting to attend the June 4th and June 18th board meetings remotely pursuant to Government Code section 11123.2, subdivision (j)(2)(A).
This motion was seconded by Ed Lowry.
The Board voted to approve the remote attendance request 3-0.

Minutes of May 7, 2025, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board voted to approve the minutes for the May 7, 2025, meeting.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

New Business:

(The Appeals Board hears and discusses new reports presented by staff.)

1. Discussion regarding processing and handling of verification of abatement forms by both the Appeals Board and the Division.

Action: Lisa Price requested to add an item to the upcoming public meeting agenda.

Old Business:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

1. Discuss the newly prepared informational stakeholder videos (re “How to File an Appeal”) and discuss whether to post on OSHAB’s website. In addition, discuss whether the Board should explore any other avenues to publicize the availability of these videos to stakeholders.

Action: Patricia Hapgood and Scott Pease are working with the media office on the video flyer and distribution suggestions. In the meantime, the tutorial videos are posted on the OSHAB website.

Legislation:

(Review and discuss current legislation which may affect the appeals Board.)

Action: Karen Halbo provided status updates on the following CA Assembly bills: AB694, AB1515, and SB20

Chairperson’s Report:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

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Action: Ed Lowry will be addressing the DOSH advisory committee on May 22, 2025 and will be meeting with the Senate Rules Committee staff at the end of the month to extend his reappointment as Chairperson. He recommended an article published in The Guardian regarding heat illness. The head of NIOSH who was fired has been reinstated.

Board Members' Reports:

(Hear reports from Board members on activities and issues affecting the Appeals Board.)

Action: No report.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood and Scott Pease toured potential new office space on Harvard Street. The lease at Venture Oaks is up in 2027. They are requesting staff to update their telework agreements since the new RTO was announced.

Action: Scott Pease advised that the Board's Zoom contract ends mid-October and we are transitioning over to the DIR's account.

Staff Reports:

(Reports from the Supervising ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. Discuss and may take action on proposals for new regulations or proposals for modifications to, or repeal of, existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: Karen Halbo stated there were no new regulatory proposals. The Pre-hearing and Hearing regulation packet is in the DIR and Agency review process and the Appeal Initiation packet is to be discussed in the closed session.

2. Ligation Update

Action: Aaron Jackson provided the following updates: A briefing schedule has been set in the matter of General Dynamics NASSCO (1300984). Angelus Block Co., Inc. (1113026) was heard in Superior Court on March 28, 2025, and has been taken under submission, the Board is working on responding to writs in the matters of the Geo Group, Inc. (1609228), Uber Technologies, Inc. (1594663), and Employbridge LLC

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(1499137). There are hearings coming up on June 3, 2025, and July 22, 2025, in the matters of Baldi/Arana Residential and Commercial Painting, Inc. (1568252) and Waterproofing and Roofing Solutions, Inc. (1690885).

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.

Public Comment:

(Public comments will be entertained during discussion of each agenda item of the open meeting.)

Action: We had several students from Stanford who attended the meeting looking for information on Heat Safety. They received a lot of support from the Board and other attendees and additional resources were suggested to help them succeed in their research.

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.)

1598862 Sony Pictures Studios, Inc.

Action: The Board discussed this matter.

Petitions for Reconsideration:

(The Division of Occupational Safety & Health and the Employer each have 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.)

1624337 Event Staff Solutions. LLC

Action: The Board voted to issue a Denial of the Petition for Reconsideration.

This motion was moved by Marvin Kropke.
It was seconded by Judi Freyman
The vote was 3-0

1637005 Jorge Mario Hernandez Mantilla

Action: This motion was moved by Marvin Kropke.

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It was seconded by Judi Freyman
The vote was 3-0

1751819 M-B Auto Body & Paint, Inc.

This Board discussed this matter.

Orders Dismissing Appeal:

1748952 All Right Electric Inc.

Action: The Board discussed this matter.

1767724 Dan Avila & Sons Farms, Inc.

Action: The Board discussed this matter.

1697207 Divergent Technologies Inc.

Action: The Board discussed this matter.

1757163 Lowe's Home Improvement #1556

Action: The Board discussed this matter.

1713716 Memo's Scaffolding Norwalk, Inc.

Action: The Board discussed this matter.

1465354 Natural Alternatives International, Inc.

Action: The Board discussed this matter.

1747961 Premier Contractors Inc.

Action: The Board discussed this matter.

Orders Denying Leave to File Late Appeal:

There are no Orders Dismissing Appeal at this time.

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.)

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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.

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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> |
| 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> |
| 1647115 | Concord Farms, Inc.
<i>Whether there was good cause for the late appeal.</i> |
| 1420923 | Drill Tech Drilling & Shoring, Inc.
<i>Whether the Employer failed to enforce its IIPP as required.
Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.</i> |
| 1488312 | Indiana Finish Line, Inc.
<i>Whether the cited employer established procedures adequate to protect employees from COVID-19.</i> |
| 1436480 | Interline Brands, Inc.
<i>Whether the employer violated foot protection standards.</i> |
| 1371294 | KPRS Construction Services, Inc.
<i>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.</i> |
| 1486257 | Kroger Company
<i>Whether the cited employer adequately trained employees regarding workplace hazards.</i> |
| 1692964 | L & S Framing, Inc. |

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Whether Employer committed the violations alleged in the citations, including alleged violations of section 1704, subdivision (f) [failure to adopt a compliant Code of Safe Practices]; section 1704, subdivision (b)(2) [failure to ensure that nailers and staplers were operated in accordance with manufacturer's recommendations], and section 1704, subdivision (g), 1509, and section 3203 [inadequate safety training on the use of nailers and staplers].

- 1235941 McCarthy Building Companies, Inc.
Whether the Division proved exposure to Valley Fever.
- 1549611 Metcalf, Inc.
Whether Employer committed the violations alleged in the citations, including alleged violations of section 3203, subdivision (a)(6) [failure to correct an unsafe condition]; section 1621, subdivision (b) [failure to provide toeboards on scaffolding]; and (3) section 3276, subdivision (e)(15)(B) [safe use of ladders], and whether Employer established its affirmative defense.
- 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 Hospitals dba Mills-Peninsula Medical Center
Was the ALJ correct in granting Employer's appeals of the citations alleging violations of section 342, subdivision (a) and section 5199, subdivision (i)?
- 1454931 Tesla Inc.
Whether the ALJ properly affirmed the citations and, if so, whether Employer committed a serious accident-related violation of section 3328, subdivision (a).
- 1486176 Tutor Perini Corporation and O&G Industries, Inc.
Whether the Employer committed a serious accident-related violation of section 3328, subdivisions (a)?

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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. USA Waste of California, Inc., 34-2022-80003841 (1384029)
2. Angelus Block Co., Inc., CIVSB2417796 (1113026)
3. Hamilton Iron Works, Inc., 24WM000100 (1497263)
4. Arana Residential and Commercial Painting, Inc. (1568252)
5. Western Oilfields Supply Company, 24WM000169 (1498595)
6. Waterproofing and Roofing Solutions, Inc., 24STCP03693, (1690885)
7. The Geo Group, Inc., 25WM000023 (1609228)
8. Uber Technologies Inc (1594663)
9. Employbridge Holding Company, 25CHCP00143 (1499137)

Appellate Court:

1. General Dynamics NASSCO (1300984)

Other Items:

There are no Other Items.

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.)

1772876	1884 Line Co
1423456	Aerotex, Inc.
1679537	Albertina's Mexican Cuisine Inc.
1614275	Amazon.com Services, LLC
1788476	American Concrete Placement Co
1632848	American Integrated Services, Inc.
1565258	American Textile Maintenance Company
1638761	APL Logistics Warehouse Management Services, Inc.

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1771467	Azure Acres Recovery Center
1753148	Baselite Building Products, LLC.
1718237	Bitterwater Outfitters, Inc./Sandy Creek
1776903	Blum Constructions Co. Inc.
1385292	Browing Contractors, Inc.
1659048	Cedars-Sinai Medical Center
1778693	Chedraui USA Inc.
1796681	Cleanrite Inc
1761720	Colony Landscape & Maintenance
1756187	Commercial Enameling Co.
1581679	Community Memorial Health System
1643333	Core-Mark International, Inc.
1668551	Core-Mark International, Inc.
1728364	Core-Mark International, Inc.
1526629	Costco Wholesale Corporation
1688662	Costco Wholesale Corporation
1772782	Dan Gerstner
1755281	Dave Davis Plastering Inc
1760887	Diede Constructions, Inc.
1776211	Diesel Tire Center Inc.
1650060	Enterprise Rent-A-Car Company of Los Angeles, LLC
1536336	Errotabere Ranches
1803866	F.C. Bickert Company, Inc.
1507856	FedEx Ground Package Systems, Inc.
1759966	Fitness International LLC
1750549	G.S. Cosmeceutical USA, Inc.
1523767	George Reed, Inc.
1632294	Healthcare Services Group, Inc.
1802918	iheartmedia, Inc.
1736250	Imperial CFS, Inc.
1774669	J. Rice Enterprises Inc.
1752148	J.R.A. Painting, Inc.
1787293	KNT Manufacturing, Inc.
1775861	La Gloria Foods Corp
1760202	Lafleur Engineering, Inc.
1748589	Luxfer, Inc.
1790443	Marborg Industries
1696959	Marina Landscape, Inc.
1673091	Martin Marietta Northern California Aggregates, LLC
1683220	Mistras Group Inc.
1603696	Netflix Productions, LLC
1787163	Nippon Shokken U.S.A. Inc.
1745427	Nobu Malibu
1727169	Nordstrom, Inc
1775007	ODI Inc
1549601	Open 4 Business Productions LLC (Subsidiary of NBC Universal)

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1480596	Otis Elevator Company
1591882	Paramount Extrusions Company
1776815	Pre Con Industries, Inc.
1593918	Preston Pipelines Infrastructure, LLC
1772897	Rainbow Mobile Auto Body Repair and Paint, Inc
1526470	Rinat Benchetrit
1584815	RJP Framing, Inc.
1690076	Roy Miller Freight Lines LLC
1790180	SK & Sons Inc
1758294	SCV Recycling Services Inc.
1750268	Sewing Collection Inc.
1759744	SFU 72 Ellis Street Operations LLC
1772454	Shasta Heating & Air Conditioning, Inc.
1790448	Snooks Candies, Inc.
1505321	Sunfoods, LLC
1628951	Superior Electrical, Mechanical & Plumbing, Inc.
1710200	Tesoro Refining & Marketing Company LLC
1801322	Tollcrest Dairy, LLC
1785463	Travassos International, Inc.
1640817	Turner Construction Company
1745515	Ultimate Development Inc
1564070	United Parcel Service, Inc.
1735912	Valero Refining Company- California
1749827	Value Price, LLC
1711616	Vitabest Nutrition, Inc.
1757365	Volt Modern
1784454	Walmart Inc.
1716768	Walmart Stores
1782352	Ward's Concrete Inc.
1788250	Ward's Concrete Inc.
1546968	Western Engineering Contractors, Inc.
1595415	Wilshire Construction, L.P.

Action: The Board discussed the Settlement Orders issued by the Administrative Law Judges.

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 10:48 a.m. and the Board returned to the Public Meeting. The Appeals Board incorporated, by reference, its actions in the Closed Session as indicated above. The Board meeting was adjourned at 10:49 a.m.