



May 4, 2017

Peter Dooley
LaborSafe Health and Safety Consulting
3360 E. 25th Street
Tucson, Arizona 85713

Dear Mr. Dooley:

I received a response to Complaint About State Programs Administration (CASPA) 2017 AZ 34 from the Industrial Commission of Arizona (ICA) and have since completed the investigation. The investigation consisted of a thorough review of the state's response, as well as a review of related documents governing the ICA. OSHA representatives also attended several ICA meetings where penalties and/or classifications were altered. There was no evidence of a standardized process or criteria being used by the ICA. This investigation resulted in two findings and recommendations.

Allegation: The ICA is reclassifying and/or reducing penalties for a number of ADOSH proposed citations without following the guidelines of the Arizona Division of Occupational Safety and Health Field Operations Manual (ADOSH FOM) or using other approved criteria.

Finding 1: The role of the ICA and the criteria to be used for making penalty adjustments is not defined in the ADOSH FOM or in any OSHA approved guidance document.

Analysis: According to Arizona state law (ARS § 23-418), "The commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation, the number of employees employed by the employer, the good faith of the employer and the history of previous violations." According to the ICA website, the commission is tasked with, among other things, approving the issuance of occupational safety and health citations with penalties in excess of \$2,500. During the Arizona State Plan's final approval process, OSHA approved the operation of the ICA as a mechanism to ensure that the penalty reduction factors specified in the FOM were being correctly applied.

ADOSH's FOM contains clear guidance on the calculation of penalties using the gravity of the violation, as well as employer's history, good faith and size. Neither the ADOSH FOM nor the ADOSH addendum to the FOM, makes any mention of the ICA, its role, or additional criteria it can use to reduce penalties. Absent any specified OSHA-approved criteria, the ICA can only act to apply the penalty reduction factors set-forth in the FOM. However, OSHA finds that the ICA is currently reducing penalties in a seemingly arbitrary manner, without regard for the factors in the FOM. This practice reduces the deterrent effect of higher penalties and fails to ensure that employers within the state are treated equally.

Recommendation 1 to Arizona: Define the role of the ICA in the ADOSH FOM, including the criteria that will be used for their approval of proposed citations and the adjustment of penalties. Submit this change to OSHA as a State Plan Change for approval.

Finding 2: The ICA is reclassifying violations.

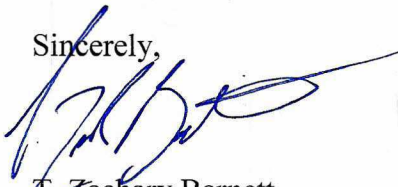
Analysis 2: Based on Arizona state law ARS 23-418, the ICA has been operating outside of its legal authority by reclassifying violations. In addition, this action does not meet the provisions of Final Approval of the Arizona State Plan.

Recommendation 2 to Arizona: The ICA must cease altering the classification of ADOSH's violations.

The state has been given 30 days to provide a written response as to the findings and recommendations. Any changes to State Plan policies and procedures in response to this CASPA would have to be submitted to OSHA for review and approval.

Thank you for your concern in worker health and safety.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Barnett', with a long, sweeping horizontal stroke extending to the right.

T. Zachary Barnett
Area Director
Phoenix Area Office