

## LAWS OF ARIZONA

## CHAPTER 136

## Senate Bill 1012

## AN ACT

RELATING TO LABOR; INCLUDING CERTAIN WORKING MEMBERS OF PARTNERSHIPS, AND MEMBERS OF ARIZONA NATIONAL GUARD, ARIZONA STATE GUARD OR UNORGANIZED MILITIA WITHIN THE WORKMEN'S COMPENSATION LAWS; PROVIDING THAT WORKMEN'S COMPENSATION LAWS SHALL APPLY TO EVERY PERSON WHO HAS IN HIS EMPLOY ANY WORKMEN OR OPERATIVES EXCEPT DOMESTIC SERVANTS; PROVIDING WORKMEN'S COMPENSATION BENEFITS FOR AGRICULTURAL WORKERS; AMENDING SECTION 23-901, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1973, CHAPTER 53, SECTION 1; AMENDING SECTIONS 23-902 AND 23-907, ARIZONA REVISED STATUTES, AND REPEALING SECTION 26-164, ARIZONA REVISED STATUTES.

**Be it enacted by the Legislature of the State of Arizona:**

Section 1. Section 23-901, Arizona Revised Statutes, as amended by Laws 1973, chapter 53, section 1, is amended to read:

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23-901. **Definitions**

In this chapter, unless the context otherwise requires:

1. "Award" means the finding or decision of a hearing officer or the commission as to the amount of compensation or benefit due an injured employee or the dependents of a deceased employee.
2. "Commission" means the industrial commission of Arizona.
3. "Compensation" means the compensation and benefits provided by this chapter.
4. "Employee", "workmen" and "operative" means:
  - (a) Every person in the service of the state, a county, city, town, municipal corporation or school district, including regular members of lawfully constituted police and fire departments of cities and towns, whether by election, appointment or contract of hire.
  - (b) Every person in the service of any employer subject to the provisions of this chapter, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is casual and not in the usual course of trade, business or occupation of the employer.
  - (c) Lessees of mining property and their employees and contractors engaged in the performance of work which is a part of the business conducted by the lessor and over which the lessor retains supervision or control are within the meaning of this paragraph employees of the lessor, and deemed to be drawing such wages as are usually paid employees for similar work. The lessor may deduct from the proceeds of ores mined by the lessees the premium required by this chapter to be paid for such employees.
  - (d) Regular members of volunteer fire departments organized pursuant to article 1, chapter 9 of title 9, volunteer firemen serving as members of a fire department of any incorporated city or town without pay or without full pay and on a part-time basis, and voluntary policemen serving as such in any incorporated city or town without pay or without full pay and on a part-time basis, are deemed to be employees, but for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for such regular members of volunteer fire departments, volunteer firemen, and volunteer policemen, shall be the salary equal to the beginning salary of the same rank or grade in the

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full-time service with the city, town or volunteer fire department, provided if there is no such full-time equivalent then the salary equivalent shall be as determined by resolution of the governing body of the city, town or volunteer fire department.

(e) Regular members of the Arizona highway patrol reserve, organized pursuant to section 41-1744, are deemed to be employees, but for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for a member of the Arizona highway patrol reserve shall be the salary received by officers of the Arizona highway patrol for their first month of regular patrol duty as an officer.

(f) Any person being evaluated or trained in vocational activities or who performs service for an employer as a trainee under the auspices of vocational rehabilitation division is deemed to be an employee of the vocational rehabilitation division, but, for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for such person shall be two hundred dollars per month.

(g) Regular members of a volunteer sheriff's reserve, which may be established by resolution of county board of supervisors, to assist the sheriff in the performance of his official duties. A roster of the current members shall monthly be certified to the clerk of the board of supervisors by the sheriff and shall not exceed the maximum number authorized by the board. Certified members of an authorized volunteer sheriff's reserve shall be deemed to be employees of the county for the purpose of coverage under the Arizona workmen's compensation laws and occupational disease disability laws and shall be entitled to receive the benefits of such laws for any compensable injuries or disabling conditions which arise out of and occur in the course of the performance of duties authorized and directed by the sheriff. Compensation benefits and premium payments shall be based upon a wage of four hundred dollars per month for each certified member of a volunteer sheriff's reserve. This subdivision shall not be construed to provide compensation coverage for any member of a sheriff's posse who is not a certified member of an authorized volunteer sheriff's reserve.

(h) A WORKING MEMBER OF A PARTNERSHIP WHO RECEIVES WAGES IRRESPECTIVE OF PROFITS MAY BE DEEMED TO BE AN EMPLOYEE ENTITLED TO THE BENEFITS PROVIDED BY CHAPTERS 6 AND 7 OF THIS TITLE UPON WRITTEN ACCEPTANCE BY THE INSURANCE CARRIER FOR THE PARTNERSHIP OF AN APPLICATION FOR COVERAGE BY SUCH WORKING PARTNER.

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THE BASIS FOR COMPUTING COMPENSATION PAYABLE TO SUCH WORKING PARTNER SHALL BE SUBJECT TO SECTION 23-1041 AND SHALL BE COMPUTED ONLY UPON ACTUAL WAGES RECEIVED, EXCLUSIVE OF PROFITS.

(i) A MEMBER OF THE ARIZONA NATIONAL GUARD, ARIZONA STATE GUARD OR UNORGANIZED MILITIA SHALL BE DEEMED A STATE EMPLOYEE AND ENTITLED TO COVERAGE UNDER THE ARIZONA WORKMEN'S COMPENSATION LAW AT ALL TIMES WHILE SUCH MEMBER IS RECEIVING THE PAYMENT OF HIS MILITARY SALARY FROM THE STATE OF ARIZONA UNDER COMPETENT MILITARY ORDERS OR UPON ORDER OF THE GOVERNOR. COMPENSATION BENEFITS SHALL BE BASED UPON THE MONTHLY MILITARY PAY RATE TO WHICH THE MEMBER IS ENTITLED AT THE TIME OF INJURY, BUT NOT LESS THAN A SALARY OF FOUR HUNDRED DOLLARS PER MONTH, NOR MORE THAN THE MAXIMUM PROVIDED BY THE WORKMEN'S COMPENSATION LAW. NO ARIZONA COMPENSATION BENEFITS SHALL INURE TO A MEMBER COMPENSABLE UNDER FEDERAL LAW.

5. "General order" means and includes an order applied generally throughout the state to all persons under jurisdiction of the commission.

6. "Insurance carrier" means the state compensation fund and every insurance carrier duly authorized by the director of insurance to write workmen's compensation or occupational disease compensation insurance in the state of Arizona.

7. "Interested party" means the employer, the employee; or if the employee is deceased, the surviving spouse or dependents; the commission, the insurance carrier or their representative.

8. "Order" means and includes any rule, regulation, direction, requirement, standard, determination or decision other than an award or a directive by the commission or a hearing officer relative to any entitlement to compensation benefits, or to the amount thereof, and any procedural ruling relative to the processing or adjudicating of a compensation matter.

9. "Personal injury by accident arising out of, and in the course of employment" ~~includes an injury caused by the wilful act of a third person directed against an employee because of his employment, but does not include a disease unless resulting from the injury,~~ shall be defined as:

(a) Personal injury by accident arising out of, and in the course of employment, or

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(b) An injury caused by the wilful act of a third person directed against an employee because of his employment, but does not include a disease unless resulting from the injury, or

(c) An occupational disease which is due to causes and conditions characteristic of and peculiar to a particular trade, occupation, process or employment, and not the ordinary diseases to which the general public is exposed, and subject to the provisions of section 23-901.01.

10. "Special order" means and includes an order other than a general order.

11. "State compensation fund" includes the state compensation fund, accident benefit fund and occupational disease compensation fund in existence upon the effective date of this section and shall thereafter include all funds under the jurisdiction of the board of directors of the state compensation fund which have been derived from the assessment of premiums, interest, penalties and investment earnings for the payment of all workmen's compensation and occupational disease compensation benefits.

Sec. 2. Section 23-902, Arizona Revised Statutes, is amended to read:

**23-902. Employers subject to chapter**

A. Employers subject to the provisions of this chapter are the state, each county, city, town, municipal corporation, school district and every person who has in his employ ~~three or more~~ ANY workmen or operatives regularly employed in the same business or establishment under contract of hire, except ~~agricultural workers not employed in the use of machinery and domestic servants. Exempted employers of agricultural workers or domestic servants or employers of less than three workmen or operatives~~ may come under the provisions of this chapter by complying with its provisions and the rules and regulations of the commission. For the purposes of this section "regularly employed" includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession or occupation of an employer.

B. When an employer procures work to be done for him by a contractor over whose work he retains supervision or control, and such work is a part or process in the trade or business of the employer, then such contractors and the persons employed by him, and his sub-contractor and persons employed by the sub-contractor, are, within the meaning of this section, employees of the original employer.

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C. A person engaged in work for another, and who while so engaged is independent of the employer in the execution of the work and not subject to the rule or control of the person for whom the work is done, but is engaged only in the performance of a definite job or piece of work, and is subordinate to the employer only in effecting a result in accordance with the employer's design, is an independent contractor, and an employer within the meaning of this section.

Sec. 3. Section 23-907, Arizona Revised Statutes, is amended to read:

**23-907. Liability of employer failing to secure compensation; defenses; presumption; right of employee to compensation under chapter**

A. Employers subject to and who fail to comply with the provisions of section 23-961 shall not be entitled to the benefits of chapters 6 and 7 during the period of noncompliance, but shall be liable in an action under any other applicable law of the state. In such action the defendant shall not avail himself of the defenses of assumption of risk or contributory negligence. In all such actions proof of the injury shall constitute prima facie evidence of negligence on the part of the employer and the burden shall be upon the employer to show freedom from negligence resulting in the injury.

B. An employee of such an employer, or the employee's dependents in case death ensued, may, in lieu of proceeding against the employer by civil action in court, file his application with the commission for compensation in accordance with the provisions of chapters 6 and 7, and the commission shall hear and determine the application for compensation in the manner other claims are heard and determined before the commission. The compensation so determined shall be paid by the employer to the person entitled thereto within ten days after receiving notice of the amount thereof as fixed and determined by the commission. ~~In the event the employer does not pay such compensation within ten days, the commission, in its discretion, may order the award paid out of the special fund created by section 23-1065 and in that event the cause of action against the employer shall be deemed assigned to the commission for the benefit of such fund. The commission shall then have a claim against the employer for the amount so paid, together with all necessary expenses, a reasonable attorney's fee to be fixed by the court, and a penalty equal to ten per cent of the amount paid by the commission out of the special fund.~~

~~C.~~ An abstract of the award may be filed in the office of the clerk of the superior court in any county in the state and shall be entered in the civil order book and judgment docket, and when so filed and entered shall be a

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lien for eight years from the date of the award upon the property of the employer located in the county. Execution may issue thereon within eight years in the same manner and with like effect as if the award were a judgment of the superior court.

C. IF THE EMPLOYER DOES NOT PAY THE COMPENSATION AWARDED PURSUANT TO SUBSECTION B OF THIS SECTION WITHIN TEN DAYS, THE COMMISSION SHALL ORDER IN A SUBSEQUENT AWARD THAT THE APPLICANT'S AWARD BE PAID OUT OF THE SPECIAL FUND CREATED BY SECTION 23-1065. THE AWARD ORDERING PAYMENT FROM THE SPECIAL FUND SHALL ALSO SPECIFY THAT TEN PER CENT OF THE AMOUNT EXPENDED WILL BE ADDED AS A PENALTY. THE AWARD WILL ACT AS A JUDGMENT AGAINST THE EMPLOYER FOR THE AMOUNT EXPENDED BY THE SPECIAL FUND PLUS THE TEN PER CENT PENALTY. IF THE COMMISSION PAYS THE AWARD THE COMMISSION MAY FILE THAT AWARD IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT IN ANY COUNTY IN THE STATE AND SUCH AWARD SHALL BE ENTERED IN THE CIVIL ORDER BOOK AND JUDGMENT DOCKET, AND WHEN SO FILED AND ENTERED SHALL BE A LIEN FOR EIGHT YEARS FROM THE DATE OF THE AWARD UPON THE PROPERTY OF THE EMPLOYER LOCATED IN THE COUNTY. EXECUTION MAY ISSUE THEREON WITHIN EIGHT YEARS IN THE SAME MANNER AND WITH LIKE EFFECT AS IF THE AWARD WERE A JUDGMENT OF THE SUPERIOR COURT. ANY RECOVERY PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE SPECIAL FUND ACCOUNT.

D. An employer with ~~three~~ ONE or more employees who is required to comply with the provisions of chapters 6 and 7 but who fails to obtain coverage through an insurance carrier or as a self-insurer shall be subject to an action by the commission to apply to the court for an injunction which shall cause the employer to cease the operation of his business until such employer complies with the provisions of law pertaining thereto.

#### Sec. 4. **Repeal**

Section 26-164, Arizona Revised Statutes, is repealed.

#### Sec. 5. **Effective date**

This act shall become effective January 1, 1974.

Approved by the Governor—May 8, 1973

Filed in the Office of the Secretary of State—May 8, 1973