

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SENATE BILL 1500

AN ACT

AMENDING SECTIONS 23-613.01, 23-614 AND 23-722, ARIZONA REVISED STATUTES;
RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-613.01, Arizona Revised Statutes, is amended
3 to read:

4 23-613.01. Employee; definition; exempt employment

5 A. "Employee" means any individual who performs services for an
6 employing unit and who is subject to the direction, rule or control of the
7 employing unit as to both the method of performing or executing the
8 services and the result to be effected or accomplished. Indications of
9 control by the employing unit include controlling the individual's hours
10 of work, location of work, right to perform services for others, tools,
11 equipment, materials, expenses and use of other workers and other indicia
12 of employment, except employee does not include:

13 1. An individual who performs services as an independent
14 contractor, business person, agent or consultant, or in a capacity
15 characteristic of an independent profession, trade, skill or occupation.

16 2. An individual subject to the direction, rule or control or
17 subject to the right of direction, rule or control of an employing unit
18 solely because of a ~~provision of~~ law regulating the organization, trade or
19 business of the employing unit.

20 3. An individual or class of individuals that the federal
21 government has decided not to and does not treat as an employee or
22 employees for federal unemployment tax purposes, AS ESTABLISHED BY THE
23 OUTCOME OF AN AUDIT OR OTHER AFFIRMATIVE TREATMENT BY THE INTERNAL REVENUE
24 SERVICE OF ANY TAXPAYER WHOSE TAX RETURNS INCLUDE INCOME FROM THE
25 INDEPENDENT CONTRACTOR RELATIONSHIP.

26 4. An individual if the employing unit demonstrates the individual
27 performs services in the same manner as a similarly situated class of
28 individuals that the federal government has decided not to and does not
29 treat as an employee or employees for federal unemployment tax purposes.

30 5. An individual to whom all of the following apply:

31 (a) Performs officiating services in recreational, interscholastic
32 or intercollegiate sporting events or contests on a contest-by-contest
33 basis.

34 (b) Has the ability to accept or reject assignments to officiate a
35 sporting event or contest.

36 (c) Has the right to officiate contests for multiple organizations
37 or entities.

38 (d) Is not otherwise employed by the sponsoring school, association
39 of schools or the organization, this state, or a political subdivision of
40 this state sponsoring the sporting event or contest.

41 6. A MEDICAL OR HEALTH CARE PROFESSIONAL WHO CONTRACTS WITH A
42 MEDICAL PRACTICE GROUP OR HOSPITAL, WHETHER DIRECTLY OR THROUGH AN AGENT,
43 AND WHO IS CHARACTERIZED BY ALL OF THE FOLLOWING:

44 (a) OBSERVES THE PRACTICES COMMONLY ASSOCIATED WITH OPERATING AS A
45 MEDICAL OR PROFESSIONAL ENTITY, SUCH AS A PROFESSIONAL CORPORATION, A

1 LIMITED LIABILITY COMPANY OR A CONTRACTOR, AND USES THE PRACTICES OF THOSE
2 ENTITIES FOR COMPENSATION, BILLING FOR SERVICES AND FILING TAX RETURNS.

3 (b) IS NOT PAID WAGES AND DOES NOT HAVE WAGE WITHHOLDINGS FROM THE
4 CONTRACTED MEDICAL PRACTICE GROUP OR HOSPITAL.

5 (c) IS NOT PROVIDED EMPLOYEE BENEFITS BY THE CONTRACTED MEDICAL
6 PRACTICE GROUP OR HOSPITAL.

7 7. A HOME CARE SERVICES PROVIDER THAT CONTRACTS WITH A PERSON OTHER
8 THAN AS AN EMPLOYEE, WHETHER DIRECTLY OR THROUGH AN AGENT, TO FURNISH
9 NONMEDICAL THERAPEUTIC AND RESTORATIVE HEALTH-RELATED OR LIFE ASSISTANCE
10 SERVICES, EXCEPT BEHAVIORAL HEALTH SERVICES, SUCH AS GENERAL SUPERVISION,
11 PROTECTIVE, PREVENTATIVE AND PERSONAL CARE, ACTIVITIES AND LIVING SKILLS
12 TRAINING, MEALS, HOUSEKEEPING, COMPANIONSHIP AND HEALTH MONITORING AT THE
13 LOCATION WHERE THE RECIPIENT RESIDES.

14 B. For the purposes of subsection A, paragraph 5 of this section,
15 "officiating services" means overseeing the play of a sporting event or
16 contest, judging whether the rules are being followed and penalizing
17 participants for infringing the rules.

18 C. Notwithstanding this section, an individual or class of
19 individuals shall not be treated as an employee by the department for
20 purposes of this chapter if, before the department's determination that
21 the individual or class of individuals at issue is an employee:

22 1. The individual or class of individuals had been performing
23 services for the employing unit.

24 2. The department had inspected work records of the employing unit
25 for time periods that the individual or class of individuals had been
26 performing these services.

27 3. The individual or class of individuals at issue was not included
28 on the contribution and wage reports of the employing unit.

29 4. After its inspection the department concluded in writing
30 provided to the employing unit that either:

31 (a) No change or changes in the inspected reports were necessary.

32 (b) The individual or class of individuals in question did not
33 constitute an employee for purposes of this chapter.

34 5. At no time between the date of the written determination
35 prescribed in paragraph 4 of this subsection, and the department's
36 subsequent conclusion that the individual or class of individuals at issue
37 constitutes an employee, did the department notify the employing unit in
38 writing that the individual or class of individuals at issue now
39 constitutes an employee for purposes of this chapter.

40 D. Subsection C of this section does not apply if either:

41 1. There has been a substantial and material change in the facts
42 ~~upon~~ ON which the writing required by subsection C, paragraph 4 of this
43 section was based.

44 2. The conclusion reached by the department pursuant to subsection
45 C, paragraph 4 of this section was the result of false statements,

1 misrepresentation, fraud or intimidation on the part of the employing
2 unit.

3 E. The following services are exempt employment under this chapter,
4 unless there is evidence of direction, rule or control sufficient to
5 satisfy the definition of an employee under subsection A of this section,
6 which is distinct from any evidence of direction, rule or control related
7 to or associated with establishing the nature or circumstances of the
8 services considered pursuant to this subsection:

9 1. Services ~~which~~ THAT are not a part or process of the
10 organization, trade or business of an employing unit and ~~which~~ THAT are
11 performed by an individual who is not treated by the employing unit in a
12 manner generally characteristic of the treatment of employees.

13 2. Services performed by an individual for an employing unit OR ITS
14 CLIENTS through isolated or occasional transactions, regardless of whether
15 ~~such~~ THE services are a part or process of the organization, trade or
16 business of the employing unit.

17 F. Notwithstanding this section, an individual or class of
18 individuals determined to be an employee or employees for purposes of the
19 federal unemployment tax act, as amended (26 United States Code sections
20 3301 through 3311), are employees under this chapter.

21 G. Notwithstanding any other provision of this chapter, this
22 section applies to an employing unit to which the provisions of section
23 23-750 apply only to the extent not inconsistent with the requirements of
24 26 United States Code sections 3304 (a)(6) and 3309.

25 H. FOR THE PURPOSES OF DETERMINING EMPLOYEE STATUS, THE DEPARTMENT
26 SHALL CONSIDER ALL OF THE EMPLOYMENT-RELATED FACTS AND MAY NOT BASE A
27 DETERMINATION ON THE FACTS THAT:

28 1. THE INDIVIDUAL PERFORMS SERVICES AS A SOLE PROPRIETORSHIP.

29 2. THE INDIVIDUAL HAS EXECUTED A RESTRICTIVE COVENANT, TRADE SECRET
30 AGREEMENT OR OTHER CONFIDENTIALITY AGREEMENT WITH THE EMPLOYING UNIT.

31 3. THE SERVICES OF THE INDIVIDUAL ARE SUBJECT TO STANDARDS FOR
32 QUALITY, TIME OR LOCATION REQUIRED BY A CLIENT OR CUSTOMER OF THE PUTATIVE
33 EMPLOYING UNIT.

34 Sec. 2. Section 23-614, Arizona Revised Statutes, is amended to
35 read:

36 23-614. Employing unit; temporary services employer;
37 professional employer organization; definitions

38 A. "Employing unit" means an individual or type of organization,
39 including a partnership, association, trust, estate, joint-stock company,
40 insurance company or corporation, whether domestic or foreign, or the
41 receiver, trustee in bankruptcy, trustee or successor of any of the
42 foregoing, or the legal representative of a deceased person, which has, or
43 ~~subsequent to~~ AFTER January 1, 1936 had, one or more individuals
44 performing services for it within this state. ~~Effective January 1,~~
45 ~~1962,~~ "Employing unit" includes any federal instrumentality that is

1 ~~neither~~ NOT wholly ~~nor~~ OR partially owned by the United States and that
2 has one or more individuals performing services for it within this state.

3 B. Each individual who performs services ~~within~~ IN this state for
4 an employing unit that maintains two or more separate establishments
5 ~~within~~ IN this state is performing services for a single employing unit
6 for all the purposes of this chapter.

7 C. Each individual employed to perform or to assist in performing
8 the work of any person in the service of an employing unit is engaged by
9 the employing unit for all the purposes of this chapter, whether the
10 individual was hired or paid directly by the employing unit or by ~~such~~ THE
11 person, ~~provided~~ IF the employing unit had actual or constructive
12 knowledge of the work. Notwithstanding any other provision of this
13 chapter except for section 23-612.01, an individual who performs services
14 in or for a particular employing unit is not in the employment of ~~such~~
15 THAT employing unit if ~~such~~ THE individual's wages for services in or for
16 the particular employing unit are paid by another employing unit, and if
17 the contributions required by this chapter on ~~such~~ THE wages are paid by
18 ~~such~~ THE other employing unit.

19 D. Notwithstanding any other provision of this chapter, whether an
20 individual or entity is the employer of specific employees shall be
21 determined by section 23-613.01, except as provided in subsections E and G
22 of this section with respect to a professional employer organization or a
23 temporary services employer. The exceptions to the definition of employee
24 prescribed in section 23-613.01, subsection A apply to determinations made
25 pursuant to subsections E, F, G and H of this section.

26 E. A professional employer organization or a temporary services
27 employer that contracts to supply a worker to perform services for a
28 customer or client is the employer of the worker who performs the
29 services. A customer or client who contracts with an individual or entity
30 that is not a professional employer organization or a temporary services
31 employer to engage a worker to perform services is the employer of the
32 worker who performs the services. Except as provided in subsection F of
33 this section, an individual or entity that is not a professional employer
34 organization or a temporary services employer, that contracts to supply a
35 worker to perform services to a customer or client and that pays
36 remuneration to the worker acts as the agent of the employer for purposes
37 of payment of remuneration.

38 F. In circumstances that are in essence a loan of an employee to
39 another employer and the direction and control of the manner and means of
40 performing the services changes to the employer to whom the employee is
41 loaned, the loaning employer continues to be the employer of the employee
42 if the loaning employer continues to pay remuneration to the employee,
43 whether or not ~~THE LOANING EMPLOYER IS~~ reimbursed by the other employer.
44 If the employer to whom the employee is loaned pays remuneration to the
45 employee for the services performed, that employer is considered the

1 employer for the purposes of any remuneration paid to the employee by the
2 employer, regardless of whether the loaning employer also pays
3 remuneration to the employee.

4 G. A professional employer organization shall report and pay all
5 required contributions to the unemployment compensation fund using the
6 state employer account number and the contribution rate of the
7 professional employer organization.

8 H. On termination of a contract between a professional employer
9 organization and a client or the failure by a professional employer
10 organization to submit reports or make tax payments as required by this
11 chapter, the client shall be treated as a new employer without a previous
12 experience record if the client has been subject to a professional
13 employer agreement for at least two years or if the client is not
14 otherwise eligible for an experience rating.

15 I. For the purposes of this section:

16 1. "Professional employer organization" has the same meaning
17 prescribed in section 23-561.

18 2. "Temporary services employer" means an employing unit that
19 contracts with clients or customers to supply workers to perform services
20 **IN MORE THAN ONE INDUSTRY** for the client or customer and that performs all
21 of the following:

22 (a) Negotiates with clients or customers for such matters as the
23 time of work, the place of work, the type of work, the working conditions,
24 the quality of services and the price of services.

25 (b) Determines assignments or reassignments of workers, even though
26 workers retain the right to refuse specific assignments.

27 (c) Retains the authority to assign or reassign a worker to other
28 clients or customers if a worker is determined unacceptable by a specific
29 client or customer.

30 (d) Assigns or reassigns the worker to perform services for a
31 client or customer.

32 (e) Sets the rate of pay of the worker, whether or not through
33 negotiation.

34 (f) Pays the worker from its own account or accounts.

35 (g) Retains the right to hire and terminate workers.

36 Sec. 3. Section 23-722, Arizona Revised Statutes, is amended to
37 read:

38 23-722. Reports of employing unit; information confidential;
39 report of banking institution; disclosure of
40 information; classification

41 A. The department, the appeals board or an appeal tribunal may
42 require from an employing unit sworn or unsworn reports with respect to
43 persons employed by it which it deems necessary for the effective
44 administration of this chapter. Information thus obtained shall not be
45 published or open to public inspection, other than to public employees in

1 the performance of their duties or to an agent of the department
2 designated as such in writing for the purpose of accomplishing certain of
3 the department's functions, in any manner revealing the employing unit's
4 identity, ~~but~~ EXCEPT THAT a claimant at a hearing before an appeal
5 tribunal, the appeals board or the department shall be supplied with the
6 information from the records to the extent necessary for the proper
7 presentation of his claim AND THE EMPLOYER SHALL BE FURNISHED A COMPLETE
8 COPY OF THE CASE RECORD ON REQUEST.

9 B. The department may request the comptroller of the currency of
10 the United States to make an examination of the correctness of any return
11 or report of a national banking association rendered pursuant to this
12 chapter and may in connection with such request transmit the report or
13 return to the comptroller of the currency of the United States as provided
14 in section 3305 of the federal internal revenue code.

15 C. An employee or an agent of the department who violates any
16 provision of this section is guilty of a class 3 misdemeanor.