

REFERENCE TITLE: workers' rights; public health emergency

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2266

Introduced by
Representatives Andrade: Butler, Cano, DeGrazia, Powers Hannley, Solorio,
Senators Gabaldon, Terán

AN ACT

AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING
ARTICLE 4; APPROPRIATING MONIES; RELATING TO EMPLOYMENT PRACTICES AND
WORKING CONDITIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 23, chapter 2, Arizona Revised Statutes, is
3 amended by adding article 4, to read:

4 ARTICLE 4. WORKER RIGHTS RELATED TO A PUBLIC HEALTH EMERGENCY

5 23-251. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "COMMISSION" MEANS THE INDUSTRIAL COMMISSION OF ARIZONA.

8 2. "DEPARTMENT" MEANS THE LABOR DEPARTMENT OF THE COMMISSION.

9 3. "PRINCIPAL" MEANS ANY OF THE FOLLOWING:

10 (a) AN EMPLOYER AS DEFINED IN THE FAIR LABOR STANDARDS ACT OF 1938
11 (52 STAT. 1060; 29 UNITED STATES CODE SECTION 203).

12 (b) A FOREIGN LABOR CONTRACTOR OR A MIGRATORY FIELD LABOR
13 CONTRACTOR OR CREW LEADER.

14 (c) THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE.

15 (d) AN ENTITY THAT CONTRACTS WITH FIVE OR MORE INDEPENDENT
16 CONTRACTORS IN THIS STATE EACH YEAR.

17 4. "PUBLIC HEALTH EMERGENCY" MEANS EITHER OF THE FOLLOWING:

18 (a) A PUBLIC HEALTH ORDER ISSUED BY A STATE OR LOCAL PUBLIC HEALTH
19 AGENCY.

20 (b) A STATE OF EMERGENCY PROCLAIMED BY THE GOVERNOR BASED ON A
21 PUBLIC HEALTH CONCERN.

22 5. "WHISTLEBLOWER" MEANS A WORKER WITH KNOWLEDGE OF AN ALLEGED
23 VIOLATION OF THIS ARTICLE OR THE WORKER'S REPRESENTATIVE.

24 6. "WORKER" MEANS EITHER OF THE FOLLOWING:

25 (a) ANY PERSON, INCLUDING A MIGRATORY LABORER, PERFORMING LABOR OR
26 SERVICES FOR THE BENEFIT OF AN EMPLOYER.

27 (b) A PERSON WHO WORKS FOR AN ENTITY THAT CONTRACTS WITH FIVE OR
28 MORE INDEPENDENT CONTRACTORS IN THIS STATE EACH YEAR.

29 23-251.01. Factors in determining whether a person is a
30 worker

31 RELEVANT FACTORS IN DETERMINING WHETHER A PERSON IS A WORKER UNDER
32 SECTION 23-251, PARAGRAPH 6, SUBDIVISION (a) INCLUDE THE DEGREE OF CONTROL
33 THE EMPLOYER MAY OR DOES EXERCISE OVER THE PERSON AND THE DEGREE TO WHICH
34 THE PERSON PERFORMS WORK THAT IS THE PRIMARY WORK OF THE EMPLOYER, EXCEPT
35 THAT AN INDIVIDUAL PRIMARILY FREE FROM CONTROL AND DIRECTION IN PERFORMING
36 THE SERVICE, BOTH UNDER THE INDIVIDUAL'S CONTRACT FOR THE PERFORMANCE OF
37 SERVICE AND IN FACT, AND WHO IS CUSTOMARILY ENGAGED IN AN INDEPENDENT
38 TRADE, OCCUPATION, PROFESSION OR BUSINESS RELATED TO THE SERVICE PERFORMED
39 IS NOT A WORKER UNDER SECTION 23-251, PARAGRAPH 6, SUBDIVISION (a).

40 23-252. Prohibition against discrimination based on claims
41 related to a public health emergency

42 A. A PRINCIPAL MAY NOT:

43 1. DISCRIMINATE, TAKE ADVERSE ACTION OR RETALIATE AGAINST ANY
44 WORKER BASED ON THE WORKER, IN GOOD FAITH, RAISING ANY REASONABLE CONCERN
45 ABOUT WORKPLACE VIOLATIONS OF GOVERNMENT HEALTH OR SAFETY RULES, OR ABOUT

1 AN OTHERWISE SIGNIFICANT WORKPLACE THREAT TO HEALTH OR SAFETY, RELATED TO
2 A PUBLIC HEALTH EMERGENCY TO THE PRINCIPAL, THE PRINCIPAL'S AGENT, OTHER
3 WORKERS, A GOVERNMENT AGENCY OR THE PUBLIC IF THE PRINCIPAL CONTROLS THE
4 WORKPLACE CONDITIONS GIVING RISE TO THE THREAT OR VIOLATION.

5 2. REQUIRE OR ATTEMPT TO REQUIRE A WORKER TO SIGN A CONTRACT OR
6 OTHER AGREEMENT THAT WOULD LIMIT OR PREVENT THE WORKER FROM DISCLOSING
7 INFORMATION ABOUT WORKPLACE HEALTH AND SAFETY PRACTICES OR HAZARDS RELATED
8 TO A PUBLIC HEALTH EMERGENCY OR TO OTHERWISE ABIDE BY A WORKPLACE POLICY
9 THAT WOULD LIMIT OR PREVENT SUCH DISCLOSURE. A CONTRACT OR AGREEMENT THAT
10 VIOLATES THIS PARAGRAPH IS VOID AND UNENFORCEABLE AS CONTRARY TO THE
11 PUBLIC POLICY OF THIS STATE. A PRINCIPAL'S ATTEMPT TO IMPOSE SUCH A
12 CONTRACT OR AGREEMENT IS AN ADVERSE ACTION IN VIOLATION OF THIS ARTICLE.

13 3. DISCRIMINATE, TAKE ADVERSE ACTION OR RETALIATE AGAINST A WORKER
14 BASED ON THE WORKER VOLUNTARILY WEARING AT THE WORKER'S WORKPLACE THE
15 WORKER'S OWN PERSONAL PROTECTIVE EQUIPMENT, SUCH AS A MASK, FACE GUARD OR
16 GLOVES, IF THE PERSONAL PROTECTIVE EQUIPMENT IS CHARACTERIZED BY ALL OF
17 THE FOLLOWING:

18 (a) PROVIDES A HIGHER LEVEL OF PROTECTION THAN THE EQUIPMENT
19 PROVIDED BY THE PRINCIPAL.

20 (b) IS RECOMMENDED BY A FEDERAL, STATE OR LOCAL PUBLIC HEALTH
21 AGENCY WITH JURISDICTION OVER THE WORKER'S WORKPLACE.

22 (c) DOES NOT RENDER THE WORKER INCAPABLE OF PERFORMING THE WORKER'S
23 JOB OR PREVENT A WORKER FROM FULFILLING THE DUTIES OF THE WORKER'S
24 POSITION.

25 4. DISCRIMINATE, TAKE ADVERSE ACTION OR RETALIATE AGAINST A WORKER
26 BASED ON THE WORKER OPPOSING ANY PRACTICE THE WORKER REASONABLY BELIEVES
27 IS UNLAWFUL UNDER THIS ARTICLE OR FOR MAKING A CHARGE, TESTIFYING,
28 ASSISTING OR PARTICIPATING IN ANY MANNER IN AN INVESTIGATION, PROCEEDING
29 OR HEARING AS TO ANY MATTER THE WORKER REASONABLY BELIEVES TO BE UNLAWFUL
30 UNDER THIS ARTICLE.

31 B. THIS SECTION DOES NOT APPLY TO A WORKER WHO DISCLOSES
32 INFORMATION EITHER:

33 1. THAT THE WORKER KNOWS TO BE FALSE.

34 2. WITH RECKLESS DISREGARD FOR THE TRUTH OR FALSITY OF THE
35 INFORMATION.

36 C. THIS SECTION DOES NOT AUTHORIZE A WORKER TO SHARE INDIVIDUAL
37 HEALTH INFORMATION THAT IS OTHERWISE PROHIBITED FROM DISCLOSURE UNDER
38 STATE OR FEDERAL LAW.

39 23-253. Notice of rights; posting; rules

40 A. A PRINCIPAL SHALL POST NOTICE OF A WORKER'S RIGHTS UNDER THIS
41 ARTICLE IN A CONSPICUOUS LOCATION ON THE PRINCIPAL'S PREMISES.

42 B. THE DEPARTMENT SHALL ADOPT RULES TO ESTABLISH THE FORM OF THE
43 NOTICE REQUIRED UNDER SUBSECTION A OF THIS SECTION.

1 23-254. Relief for aggrieved person
2 A. A PERSON MAY SEEK RELIEF FOR A VIOLATION OF THIS ARTICLE BY
3 EITHER:
4 1. FILING A COMPLAINT WITH THE DEPARTMENT PURSUANT TO SECTION
5 23-255.
6 2. BRINGING AN ACTION PURSUANT TO SECTION 23-256 OR 23-257.
7 B. A PERSON SHALL EXHAUST ADMINISTRATIVE REMEDIES PURSUANT TO
8 SECTION 23-255 BEFORE BRINGING AN ACTION IN COURT.
9 23-255. Administrative enforcement; civil penalty; rules
10 A. WITHIN TWO YEARS AFTER AN ALLEGED VIOLATION OF THIS ARTICLE, AN
11 AGGRIEVED INDIVIDUAL OR WHISTLEBLOWER MAY FILE A COMPLAINT AGAINST A
12 PRINCIPAL WITH THE DEPARTMENT AS SPECIFIED IN SUBSECTIONS B AND C OF THIS
13 SECTION.
14 B. UNTIL THE DATE THE DEPARTMENT MAKES A COMPLAINT FORM PUBLICLY
15 AVAILABLE, AN AGGRIEVED INDIVIDUAL OR WHISTLEBLOWER MAY FILE A COMPLAINT
16 OF A VIOLATION OF THIS ARTICLE WITH THE DEPARTMENT IN ANY FORM BY MAIL OR
17 EMAIL. THE DEPARTMENT MAY LATER REQUIRE THE AGGRIEVED INDIVIDUAL OR
18 WHISTLEBLOWER TO COMPLETE THE DEPARTMENT'S COMPLAINT FORM. THE FILING
19 DATE IS THE DATE OF THE CLAIMANT'S ORIGINAL FILING, EVEN IF THE DEPARTMENT
20 LATER REQUESTS ADDITIONAL INFORMATION OR COMPLETION OF THE DEPARTMENT'S
21 COMPLAINT FORM.
22 C. AFTER THE DEPARTMENT MAKES A COMPLAINT FORM PUBLICLY AVAILABLE,
23 AN AGGRIEVED INDIVIDUAL OR WHISTLEBLOWER MAY FILE A COMPLAINT ONLY BY
24 COMPLETING THE REQUIRED FORM.
25 D. THE DEPARTMENT SHALL EITHER:
26 1. INVESTIGATE ALLEGED PRINCIPAL VIOLATIONS OF, OR INTERFERENCE
27 WITH RIGHTS OR RESPONSIBILITIES UNDER, THIS ARTICLE AND COMPLAINTS FILED
28 WITH THE DEPARTMENT BY AGGRIEVED INDIVIDUALS AND WHISTLEBLOWERS.
29 2. AUTHORIZE AN AGGRIEVED INDIVIDUAL OR WHISTLEBLOWER TO PROCEED
30 WITH AN ACTION IN COURT AS PROVIDED IN SECTIONS 23-256 AND 23-257. A
31 PERSON WHO RECEIVES AUTHORIZATION PURSUANT TO THIS PARAGRAPH IS CONSIDERED
32 TO HAVE EXHAUSTED ADMINISTRATIVE REMEDIES.
33 E. IN AN INVESTIGATION OF ALLEGED PRINCIPAL RETALIATION OR
34 INTERFERENCE WITH WORKER RIGHTS, IF AN INVESTIGATION YIELDS A
35 DETERMINATION THAT:
36 1. A VIOLATION HAS OCCURRED, THE DEPARTMENT MAY AWARD REASONABLE
37 ATTORNEY FEES AND, AFTER A HEARING, MAY IMPOSE A CIVIL PENALTY OF AT LEAST
38 \$100 FOR EACH DAY THE VIOLATION CONTINUES.
39 2. THE RIGHTS OF MULTIPLE WORKERS HAVE BEEN VIOLATED, THE VIOLATION
40 AS TO EACH WORKER IS A SEPARATE VIOLATION FOR THE PURPOSES OF THIS
41 SUBSECTION.
42 3. A WORKER WAS FIRED, VOLUNTARILY LEFT EMPLOYMENT OR EXPERIENCED A
43 REDUCTION IN PAY DUE TO A PRINCIPAL'S VIOLATION, THE DETERMINATION MAY
44 INCLUDE AN ORDER TO EITHER:

1 (a) REINSTATE OR REHIRE THE WORKER AND PAY THE WORKER'S BACK PAY
2 UNTIL REINSTATEMENT OR REHIRING.

3 (b) PAY THE WORKER FRONT PAY FOR A REASONABLE PERIOD AFTER THE
4 ORDER, IF REINSTATEMENT OR REHIRING IS DETERMINED NOT TO BE FEASIBLE.

5 F. DETERMINATIONS MADE BY THE DEPARTMENT UNDER THIS SECTION ARE
6 APPEALABLE PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10 AND RULES ADOPTED
7 BY THE COMMISSION REGARDING APPEALS AND STRATEGIC ENFORCEMENT.

8 23-256. Action in superior court; relief

9 A. AN AGGRIEVED INDIVIDUAL, WITHIN NINETY DAYS AFTER EXHAUSTING
10 ADMINISTRATIVE REMEDIES PURSUANT TO SECTION 23-255, MAY COMMENCE AN ACTION
11 IN SUPERIOR COURT AGAINST A PRINCIPAL FOR A VIOLATION OF THIS ARTICLE.

12 B. A COURT MAY ORDER AFFIRMATIVE RELIEF THAT THE COURT DETERMINES
13 TO BE APPROPRIATE, INCLUDING THE FOLLOWING RELIEF, AGAINST A RESPONDENT
14 WHO IS FOUND TO HAVE ENGAGED IN A DISCRIMINATORY, ADVERSE OR RETALIATORY
15 EMPLOYMENT PRACTICE PROHIBITED BY THIS ARTICLE:

16 1. REINSTATEMENT OR REHIRING OF A WORKER, WITH OR WITHOUT BACK PAY.

17 2. THE GREATER OF EITHER:

18 (a) \$10,000.

19 (b) ANY LOST PAY RESULTING FROM THE VIOLATION, INCLUDING BACK PAY
20 FOR A REINSTATED OR REHIRED WORKER AND FRONT PAY FOR A WORKER WHO IS NOT
21 REINSTATED OR REHIRED.

22 3. ANY OTHER EQUITABLE RELIEF THE COURT DEEMS APPROPRIATE.

23 C. IN ADDITION TO THE RELIEF AVAILABLE PURSUANT TO SUBSECTION B OF
24 THIS SECTION, IN A CIVIL ACTION BROUGHT BY A PLAINTIFF UNDER THIS ARTICLE
25 AGAINST A DEFENDANT WHO IS FOUND TO HAVE ENGAGED IN AN INTENTIONAL
26 DISCRIMINATORY, ADVERSE OR RETALIATORY EMPLOYMENT PRACTICE, THE PLAINTIFF
27 MAY RECOVER COMPENSATORY AND PUNITIVE DAMAGES AS FOLLOWS:

28 1. A PLAINTIFF MAY RECOVER PUNITIVE DAMAGES AGAINST A DEFENDANT IF
29 THE PLAINTIFF DEMONSTRATES BY CLEAR AND CONVINCING EVIDENCE THAT THE
30 DEFENDANT ENGAGED IN A DISCRIMINATORY, ADVERSE OR RETALIATORY EMPLOYMENT
31 PRACTICE WITH MALICE OR RECKLESS INDIFFERENCE TO THE RIGHTS OF THE
32 PLAINTIFF, EXCEPT THAT IF THE DEFENDANT DEMONSTRATES GOOD FAITH EFFORTS TO
33 COMPLY WITH THIS ARTICLE AND TO PREVENT DISCRIMINATORY, ADVERSE AND
34 RETALIATORY EMPLOYMENT PRACTICES IN THE WORKPLACE, THE COURT MAY NOT AWARD
35 PUNITIVE DAMAGES AGAINST THE DEFENDANT.

36 2. A PLAINTIFF MAY RECOVER COMPENSATORY DAMAGES AGAINST A DEFENDANT
37 FOR OTHER PECUNIARY LOSSES AND EMOTIONAL PAIN AND SUFFERING,
38 INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE AND OTHER
39 NONPECUNIARY LOSSES.

40 3. IN DETERMINING THE APPROPRIATE LEVEL OF DAMAGES TO AWARD A
41 PLAINTIFF WHO HAS BEEN THE VICTIM OF AN INTENTIONAL DISCRIMINATORY,
42 ADVERSE OR RETALIATORY EMPLOYMENT PRACTICE, THE COURT SHALL CONSIDER THE
43 SIZE AND ASSETS OF THE DEFENDANT AND THE EGREGIOUSNESS OF THE
44 DISCRIMINATORY, ADVERSE OR RETALIATORY EMPLOYMENT PRACTICE.

1 D. COMPENSATORY OR PUNITIVE DAMAGES AWARDED PURSUANT TO SUBSECTION
2 C OF THIS SECTION ARE IN ADDITION TO, AND DO NOT INCLUDE, FRONT PAY, BACK
3 PAY, INTEREST ON BACK PAY OR ANY OTHER TYPE OF RELIEF AWARDED PURSUANT TO
4 SUBSECTION B OF THIS SECTION.

5 E. IF A PLAINTIFF IN A CIVIL ACTION FILED UNDER THIS ARTICLE SEEKS
6 COMPENSATORY OR PUNITIVE DAMAGES PURSUANT TO SUBSECTION C OF THIS SECTION,
7 ANY PARTY TO THE CIVIL ACTION MAY DEMAND A TRIAL BY JURY.

8 F. THE COURT SHALL AWARD REASONABLE ATTORNEY FEES TO A PLAINTIFF
9 WHO PREVAILS IN AN ACTION BROUGHT PURSUANT TO THIS SECTION.

10 23-257. Whistleblower enforcement

11 A. A WHISTLEBLOWER WHO HAS EXHAUSTED THE ADMINISTRATIVE REMEDIES
12 PURSUANT TO SECTION 23-255 MAY BRING A CIVIL ACTION AGAINST A PRINCIPAL
13 FOR A VIOLATION OF THIS ARTICLE ON BEHALF OF THIS STATE IN SUPERIOR COURT
14 PURSUANT TO THIS SECTION. THIS STATE MAY INTERVENE IN THE ACTION TO
15 PROSECUTE IN ITS OWN NAME.

16 B. AT THE TIME THAT THE ACTION IS FILED, THE WHISTLEBLOWER SHALL
17 GIVE WRITTEN NOTICE TO THE DEPARTMENT OF THE SPECIFIC PROVISIONS OF THIS
18 ARTICLE ALLEGED TO HAVE BEEN VIOLATED.

19 C. IF THE COURT FINDS THAT A VIOLATION HAS OCCURRED, THE COURT MAY
20 ENTER A JUDGMENT AGAINST THE PRINCIPAL OF AT LEAST \$100 BUT NOT MORE THAN
21 \$1,000 FOR EACH VIOLATION, AND FOR APPROPRIATE INJUNCTIVE AND EQUITABLE
22 RELIEF. THE COURT SHALL AWARD THE WHISTLEBLOWER REASONABLE ATTORNEY FEES.
23 THE ATTORNEY FEES ARE NOT SUBJECT TO THE DISTRIBUTION SPECIFIED IN
24 SUBSECTION D OF THIS SECTION.

25 D. THE PROCEEDS OF ANY JUDGMENT ENTERED PURSUANT TO THIS SECTION
26 SHALL BE DISTRIBUTED AS FOLLOWS:

27 1. SEVENTY-FIVE PERCENT TO THE DEPARTMENT FOR ENFORCEMENT OF THIS
28 ARTICLE.

29 2. TWENTY-FIVE PERCENT TO THE FIRST WHISTLEBLOWER WHO FILED THE
30 ACTION.

31 E. THE RIGHT TO BRING AN ACTION UNDER THIS SECTION MAY NOT BE
32 IMPAIRED BY ANY PRIVATE CONTRACT. AN ACTION UNDER THIS SECTION SHALL BE
33 TRIED PROMPTLY, WITHOUT REGARD TO CONCURRENT ADJUDICATION OF PRIVATE
34 CLAIMS.

35 23-258. Employment support fund; exemption

36 THE EMPLOYMENT SUPPORT FUND IS ESTABLISHED CONSISTING OF LEGISLATIVE
37 APPROPRIATIONS FOR THE PURPOSES OF ADMINISTERING THIS ARTICLE. THE
38 COMMISSION SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY
39 APPROPRIATED AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING
40 TO LAPSING OF APPROPRIATIONS.

41 23-259. Rules

42 THE DEPARTMENT MAY ADOPT RULES NECESSARY TO IMPLEMENT THIS ARTICLE.

1 Sec. 2. Appropriation; employment support fund

2 The sum of \$_____ is appropriated from the state general fund
3 in fiscal year 2022-2023 to the employment support fund established by
4 section 23-258, Arizona Revised Statutes, as added by this act.

5 Sec. 3. Applicability

6 This act applies to conduct occurring from and after the effective
7 date of this act.

8 Sec. 4. Emergency

9 This act is an emergency measure that is necessary to preserve the
10 public peace, health or safety and is operative immediately as provided by
11 law.