

REFERENCE TITLE: industrial commission; workers' compensation; claim

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1403

Introduced by
Senator Gowan

AN ACT

AMENDING SECTIONS 23-947, 23-1043.04 AND 23-1061, ARIZONA REVISED
STATUTES; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-947, Arizona Revised Statutes, is amended to
3 read:

4 23-947. Time within which hearing must be requested;
5 definition

6 A. A hearing on any question relating to a claim shall not be
7 granted unless the employee has previously filed an application for
8 compensation within the time and in the manner prescribed by section
9 23-1061 OR THE INSURANCE CARRIER HAS FILED A COMPENSATION CLAIM WITH THE
10 COMMISSION ON BEHALF OF THE EMPLOYEE PURSUANT TO SECTION 23-1061 and the
11 request for a hearing is filed within ninety days after the notice sent
12 under section 23-1061, subsection F or within ninety days of notice of a
13 determination by the commission, insurance carrier or self-insuring
14 employer under section 23-1047 or 23-1061, except that an employer who is
15 subject to and fails to comply with section 23-961 or 23-962 must file a
16 request for a hearing within thirty days ~~of~~ AFTER notice of a
17 determination by the commission, or within ten days ~~of~~ AFTER all other
18 awards issued by the commission.

19 B. ~~As used in~~ FOR THE PURPOSES OF this section, "filed" means that
20 the request for a hearing is in the possession of the commission. Failure
21 to file with the commission within the required time by a party means that
22 the determination by the commission, insurance carrier or self-insuring
23 employer is final and res judicata to all parties. The industrial
24 commission or any court shall not excuse a late filing unless any of the
25 following applies:

26 1. The person to whom the notice is sent does not request a hearing
27 because of justifiable reliance on a representation by the commission,
28 employer or INSURANCE carrier. ~~in~~ FOR THE PURPOSES OF this paragraph,
29 "justifiable reliance" means that the person to whom the notice is sent
30 has made reasonably diligent efforts to verify the representation,
31 regardless of whether the representation is made pursuant to statutory or
32 other legal authority.

33 2. At the time the notice is sent the person to whom it is sent is
34 suffering from insanity or legal incompetence or incapacity, including
35 minority.

36 3. The person to whom the notice is sent shows by clear and
37 convincing evidence that the notice was not received.

38 C. The late filing shall not be excused under subsection B of this
39 section if the person to whom the notice is sent or the person's legal
40 counsel knew or, with the exercise of reasonable care and diligence,
41 should have known of the fact of the notice at any time during the filing
42 period.

1 Sec. 2. Section 23-1043.04, Arizona Revised Statutes, is amended to
2 read:

3 23-1043.04. Methicillin-resistant staphylococcus aureus;
4 spinal meningitis; tuberculosis; establishing
5 exposure; definitions

6 A. A claim for a condition, infection, disease or disability
7 involving or related to methicillin-resistant staphylococcus aureus,
8 spinal meningitis or tuberculosis shall include the occurrence of a
9 significant exposure as defined in this section and, except as provided in
10 subsection B of this section, shall be processed and determined under this
11 chapter and applicable principles of law.

12 B. Notwithstanding any other law, an employee who satisfies the
13 following criteria presents a prima facie claim for a condition,
14 infection, disease or disability involving or related to
15 methicillin-resistant staphylococcus aureus, spinal meningitis or
16 tuberculosis if the medical evidence shows to a reasonable degree of
17 medical probability that the employee sustained a significant exposure
18 within the meaning of this section:

19 1. The employee's regular course of employment involves handling of
20 or exposure to methicillin-resistant staphylococcus aureus, spinal
21 meningitis or tuberculosis.

22 2. Within thirty calendar days after a possible significant
23 exposure that arises out of and in the course of employment, the employee
24 reports in writing to the employer the details of the exposure. The
25 employer shall notify its insurance carrier or claims processor of the
26 report. Failure of the employer to notify the insurance carrier is not a
27 defense to a claim by the employee.

28 3. For a claim involving methicillin-resistant staphylococcus
29 aureus, the employee must be diagnosed with methicillin-resistant
30 staphylococcus aureus within fifteen days after the employee reports
31 pursuant to paragraph 2 of this subsection.

32 4. For a claim involving spinal meningitis, the employee is
33 diagnosed with spinal meningitis within two to eighteen days ~~of~~ AFTER the
34 possible significant exposure.

35 5. For a claim involving tuberculosis, the employee is diagnosed
36 with tuberculosis within twelve weeks ~~of~~ AFTER the possible significant
37 exposure.

38 C. On presentation or showing of a prima facie claim under this
39 section, the employer may produce specific, relevant and probative
40 evidence to dispute the underlying facts, to contest whether the exposure
41 was significant as defined in this section or to establish an alternative
42 significant exposure involving the presence of methicillin-resistant
43 staphylococcus aureus, spinal meningitis or tuberculosis.

1 D. A person alleged to be a source of a significant exposure shall
2 not be compelled by subpoena or other court order to release confidential
3 information relating to methicillin-resistant staphylococcus aureus,
4 spinal meningitis or tuberculosis either by document or by oral testimony.
5 Evidence of the alleged source's methicillin-resistant staphylococcus
6 aureus, spinal meningitis or tuberculosis status may be introduced by
7 either party if the alleged source knowingly and willingly consents to the
8 release of that information.

9 E. Notwithstanding title 36, chapter 6, article 4, medical
10 information regarding the employee obtained by a physician or surgeon is
11 subject to section 23-908, subsection D.

12 F. The commission by rule shall prescribe requirements and forms
13 regarding employee notification of the requirements of this section and
14 the proper documentation of a significant exposure.

15 G. Notwithstanding any other law, expenses for postexposure
16 evaluation and follow-up, including reasonably required prophylactic
17 treatment, for spinal meningitis or tuberculosis, shall be a medical
18 benefit under section 23-1061 or 23-1062 for any significant exposure that
19 arises out of and in the course of employment if the employee files a
20 claim under this article for the significant exposure, ~~or~~ the employee
21 reports in writing to the employer the details of the exposure **OR THE**
22 **INSURANCE CARRIER FILES A COMPENSATION CLAIM WITH THE COMMISSION ON BEHALF**
23 **OF THE EMPLOYEE PURSUANT TO SECTION 23-1061.** Providing postexposure
24 evaluation and follow-up, including prophylactic treatment, does not
25 constitute acceptance of a claim for a condition, infection, disease or
26 disability involving or related to the significant exposure.

27 H. For the purposes of this section:

28 1. "Employee" means firefighters, law enforcement officers,
29 corrections officers, probation officers, emergency medical technicians
30 and paramedics who are not employed by a health care institution as
31 defined in section 36-401.

32 2. "Significant exposure":

33 (A) Means exposure in the course of employment to aerosolized
34 bacteria for claims under this section relating to methicillin-resistant
35 staphylococcus aureus, spinal meningitis or tuberculosis. **Significant**
36 **exposure**

37 (B) Includes exposure in the course of employment to bodily fluids
38 or skin for claims under this section relating to methicillin-resistant
39 staphylococcus aureus.

40 Sec. 3. Section 23-1061, Arizona Revised Statutes, is amended to
41 read:

42 23-1061. Notice of accident; form of notice; claim for
43 compensation; reopening; payment of compensation

44 A. Notwithstanding section 23-908, subsection E, no claim for
45 compensation shall be valid or enforceable unless the claim is filed with

1 the commission OR THE INSURANCE CARRIER by the employee, or if resulting
2 in death by the parties entitled to compensation, or someone on their
3 behalf, in writing within one year after the injury occurred or the right
4 thereto accrued. The time for filing a compensation claim begins to run
5 when the injury becomes manifest or when the claimant knows or in the
6 exercise of reasonable diligence should know that the claimant has
7 sustained a compensable injury. Except as provided in subsection B of
8 this section, neither the commission nor any court shall have jurisdiction
9 to consider a claim that is not timely filed under this subsection, except
10 if the employee or other party entitled to file the claim has delayed in
11 doing so because of justifiable reliance on a material representation by
12 the commission, employer or insurance carrier or if the employee or other
13 party entitled to file the claim is insane or legally incompetent or
14 incapacitated at the time the injury occurs or the right to compensation
15 accrues or during the one-year period thereafter. If the insanity or
16 legal incompetence or incapacity occurs after the one-year period has
17 commenced, the running of the remainder of the one-year period shall be
18 suspended during the period of insanity or legal incompetence or
19 incapacity. If the employee or other party is insane or legally
20 incompetent or incapacitated when the injury occurs or the right to
21 compensation accrues, the one-year period commences to run immediately on
22 the termination of insanity or legal incompetence or incapacity. The
23 commission on receiving a claim shall give notice to the INSURANCE
24 carrier. AN INSURANCE CARRIER SHALL FILE A COMPENSATION CLAIM WITH THE
25 COMMISSION ON BEHALF OF ANY EMPLOYEE WHO FILES A WORKERS' COMPENSATION
26 CLAIM WITH THE INSURANCE CARRIER.

27 B. Failure of an employee or any other party entitled to
28 compensation to file a claim with the commission OR THE INSURANCE CARRIER
29 within one year or to comply with section 23-908 shall not bar a claim if
30 the insurance carrier or employer has commenced payment of compensation
31 benefits under section 23-1044, 23-1045 or 23-1046, except that the
32 payments provided for by section 23-1046, subsection A, paragraph 1 and
33 section 23-1065, subsection A shall not be considered compensation
34 benefits for the purposes of this section.

35 C. If the commission receives a notification of the injury, the
36 commission shall send a claim form to the employee.

37 D. The issue of failure to file a claim must be raised at the first
38 hearing on a claim for compensation in respect to the injury or death.

39 E. Within ten days after receiving notice of an accident, the
40 employer shall inform the employer's insurance carrier and the commission
41 on such forms as may be prescribed by the commission.

42 F. Each insurance carrier and self-insuring employer shall report
43 to the commission a notice of the first payment of compensation and shall
44 serve on the commission and the employee any denial of a claim, any change
45 in the amount of compensation and the termination thereof OF COMPENSATION,

1 except that claims for medical, surgical and hospital benefits that are
2 not denied shall be reported to the commission in the form and manner
3 determined by the commission. In all cases where compensation is payable,
4 the **INSURANCE** carrier or self-insuring employer shall promptly determine
5 the average monthly wage pursuant to section 23-1041. Within thirty days
6 ~~of~~ **AFTER** the payment of the first installment of compensation, the
7 **INSURANCE** carrier or self-insuring employer shall notify the employee and
8 commission of the average monthly wage of the claimant as calculated, and
9 the basis for such determination. The commission shall then make its own
10 independent determination of the average monthly wage pursuant to section
11 23-1041. The commission, within thirty days after receipt of such notice,
12 shall notify the employee, employer and **INSURANCE** carrier of such
13 determination. The amount determined by the commission shall be payable
14 retroactive to the first date of entitlement. The first payment of
15 compensation shall be accompanied by a notice on a form prescribed by the
16 commission stating the manner in which the amount of compensation was
17 determined.

18 G. Except as otherwise provided by law, the insurance carrier or
19 self-insuring employer shall process and pay compensation and provide
20 medical, surgical and hospital benefits, without the necessity for the
21 making of an award or determination by the commission.

22 H. On a claim that has been previously accepted, an employee may
23 reopen the claim to secure an increase or rearrangement of compensation or
24 additional benefits by filing with the commission a petition requesting
25 the reopening of the employee's claim on the basis of a new, additional or
26 previously undiscovered temporary or permanent condition, which petition
27 shall be accompanied by a statement from a physician setting forth the
28 physical condition of the employee relating to the claim. A claim shall
29 not be reopened if the initial claim for compensation was previously
30 denied by a notice of claim status or determination by the commission and
31 the notice or determination was allowed to become final and no exception
32 applies under section 23-947 excusing a late filing to request a
33 hearing. A claim shall not be reopened because of increased subjective
34 pain if the pain is not accompanied by a change in objective physical
35 findings. A claim shall not be reopened solely for additional diagnostic
36 or investigative medical tests, but expenses for any reasonable and
37 necessary diagnostic or investigative tests that are causally related to
38 the injury shall be paid by the employer or the employer's insurance
39 carrier. Expenses for reasonable and necessary medical and hospital care
40 and laboratory work shall be paid by the employer or the employer's
41 insurance carrier if the claim is reopened as provided by law and if these
42 expenses are incurred within fifteen days after the date that the petition
43 to reopen is filed. The payment for such reasonable and necessary
44 medical, hospital and laboratory work expense shall be paid for by the
45 employer or the employer's insurance carrier if the claim is reopened as

1 provided by law and if such expenses are incurred within fifteen days
2 after the filing of the petition to reopen. Surgical benefits are not
3 payable for any period ~~prior to~~ BEFORE the date of filing a petition to
4 reopen, except that surgical benefits are payable for a period ~~prior to~~
5 BEFORE the date of filing the petition to reopen not to exceed seven days
6 if a bona fide medical emergency precludes the employee from filing a
7 petition to reopen ~~prior to~~ BEFORE the surgery. No monetary compensation
8 is payable for any period ~~prior to~~ BEFORE the date of filing the petition
9 to reopen.

10 I. On the filing of a petition to reopen a claim, the commission
11 shall in writing notify the employer's insurance carrier or the
12 self-insuring employer, which shall in writing notify the commission and
13 the employee within twenty-one days after the date of such notice of its
14 acceptance or denial of the petition. The reopened claim shall be
15 processed thereafter in like manner as a new claim.

16 J. The commission shall investigate and review any claim in which
17 it appears to the commission that the claimant has not been granted the
18 benefits to which such claimant is entitled. If the commission determines
19 that payment or denial of compensation is improper in any way, it shall
20 hold a hearing pursuant to section 23-941 within sixty days after
21 receiving notice of such impropriety. Any claim for temporary partial
22 disability benefits under this subsection must be filed with the
23 commission within two years after the date the claimed entitlement to
24 compensation accrued or within two years after the date on which an award
25 for benefits encompassing the entitlement period becomes final. A claim
26 for temporary partial disability compensation shall be deemed to accrue
27 when the employee knew or with the exercise of reasonable diligence should
28 have known that the INSURANCE carrier, self-insured employer or special
29 fund denied or improperly paid compensation. A claim for temporary
30 partial disability benefits shall not be deemed to have accrued any
31 earlier than September 26, 2008.

32 K. When there is a dispute as to which employer or insurance
33 carrier is liable for the payment of a compensable claim, the commission,
34 by order, may designate the employer or insurance carrier that shall pay
35 the claim. Payment shall begin within fourteen days after the employer or
36 insurance carrier has been ordered by the commission to commence payment.
37 When a final determination has been made as to which employer or insurance
38 carrier is actually liable, the commission shall direct any necessary
39 monetary adjustment or reimbursement among the parties or INSURANCE
40 carriers involved.

41 L. On application to the commission and for good cause shown, the
42 commission may direct that a document filed as a claim for compensation
43 benefits be designated as a petition to reopen, effective as of the
44 original date of filing. In like manner on application and good cause
45 shown, the commission may direct that a document filed as a petition to

1 reopen be designated as a claim for compensation benefits, effective as of
2 the original date of filing.

3 ~~M.~~ N. If the insurance carrier or self-insurer does not issue a
4 notice of claim status denying the claim within twenty-one days after the
5 date the INSURANCE carrier is notified by the commission of a claim or of
6 a petition to reopen, the INSURANCE carrier shall pay immediately
7 compensation as if the claim were accepted, from the date the INSURANCE
8 carrier is notified by the commission of a claim or petition to reopen
9 until the date on which the INSURANCE carrier issues a notice of claim
10 status denying such claim. Compensation includes medical, surgical and
11 hospital benefits. This section shall not apply to cases involving seven
12 days or less of time lost from work.