



# Arizona State Senate **Background Brief**

November 12, 2008

## **Note to Reader:**

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## **LABOR EMPLOYMENT LAWS**

Employment in Arizona is regulated by both federal and state law. Some issues, such as mandatory union membership and minimum wage, are regulated by differing federal and state laws, whereas other issues, including overtime, are addressed only by federal law or state law, but not both. In other instances, such as discrimination in employment, Arizona has essentially codified federal law, thereby providing the Arizona Attorney General (AG) with the power of enforcement.

Following is a summary of several labor issues in Arizona and the laws that regulate them, including right-to-work, discrimination, at-will employment, and wages and hours.

### **RIGHT-TO-WORK**

Arizona is one of a number of states that has a “right-to-work” provision in its Constitution. Article XXV of the Constitution of Arizona states, “No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization, nor shall the State or any subdivision thereof, or any corporation, individual or association of any kind enter into any agreement, written or oral, which excludes any person from employment or continuation of employment because of non-membership in a labor organization.” This provision, effective since 1946, prohibits unions from requiring employers to hire only union employees. Arizona statute restates verbatim this language.

The National Labor Relations Act (NLRA) defines the right of most private sector employees, with specific exceptions, to organize and to bargain collectively with their employers through representatives of their own choosing, or not to do so. According to the National Labor Relations Board, which enforces the Act, NLRA permits, under certain conditions, a union and an employer to make a union-security agreement. Such an agreement requires employees to make certain payments to the union in order to retain their jobs, but cannot require employees to be union members. Under a union-security agreement, individuals choosing to be dues-paying nonmembers may be required to pay full initiation fees and dues that unions may expend only on activities related to collective bargaining, contract administration and grievance adjustment.

In right-to-work states, unions cannot ask and employers cannot agree to enter into union-security agreements. Employees cannot be required to either join the union or pay the equivalent dues in order to remain employed. Employees who want to join can do so, with all the privileges of membership, such as participation in contract negotiations, ratification of the contract, voting on the decision to strike and voting for leadership. Nonmembers are generally denied those privileges, but are accorded any contractual benefits. In addition, the union has a duty to represent all employees fairly without regard to their membership status.

## ***DISCRIMINATION IN EMPLOYMENT***

### ***Federal Civil Rights Act of 1964 (CRA)***

Title VII of the CRA, as amended, protects individuals against discrimination on the basis of race, color, national origin, sex and religion in regard to any term, condition or privilege of employment. It prohibits not only intentional discrimination, but also job policies that disproportionately affect certain groups of persons and that are not related to the job and the needs of the business. The CRA applies to employers with 15 or more employees.

### ***Federal Americans with Disabilities Act of 1990 (ADA)***

Title I of the ADA, as amended, prohibits private and public employers from discriminating against qualified individuals with disabilities in regard to any term, condition or privilege of employment. Like the CRA, it too covers employers with 15 or more employees. An employee is considered disabled if he or she: 1) has a physical or mental impairment that substantially limits one or more major life activities; 2) has a record of such impairment; or 3) is regarded as having such an impairment. According to the U.S. Equal Employment Opportunity Commission, “major life activities” are those basic activities that the general population can perform with little or no difficulty (e.g., caring for oneself, walking, seeing, hearing, speaking and learning). A qualified employee or applicant with a disability

is an individual who, despite having a disability, can perform the essential functions of the particular job, with or without reasonable accommodation. Reasonable accommodation may include, but is not limited to:

- making existing facilities readily accessible to and usable by persons with disabilities.
- job restructuring and modifying work schedules.
- acquiring or modifying equipment; adjusting examinations, training materials or policies; and providing qualified readers or interpreters.

An employer must make an accommodation if it would not impose undue hardship on the employer’s business.

### ***Arizona’s Civil Rights Laws***

Arizona’s civil rights statutes codify the CRA and ADA, allowing the AG to enforce both laws. Specifically, statute prohibits an employer from failing or refusing to hire or to discharge any individual or from otherwise discriminating against any individual with respect to the individual’s compensation, terms, condition or privileges of employment because of the individual’s race, color, religion, sex, age, disability or national origin. It also prohibits an employer from limiting, segregating or classifying employees or prospective employees in any way that deprives any individual from employment opportunities or otherwise adversely affects the individual’s status as an employee because of the individual’s race, color, religion, sex, age, disability or national origin.

## ***AT-WILL EMPLOYMENT***

Historically, employment for an indefinite period of time has been considered at-will employment that can be terminated by either the employer or the employee at any time with or without cause or notice. Arizona’s Employment Protection Act of 1996 (Act) codifies the at-will doctrine by establishing that the employment relationship is contractual in nature and severable at the pleasure of either the employee or the employer, unless the employment relationship is varied by a written contract that

is: 1) signed by the employer and employee; 2) set forth in an employment handbook or similar document distributed to employees; or 3) set forth in a signed writing by the party to be charged (usually the employer).

The Act also limits employees' claims for wrongful termination. Under the Act, an employee has a claim under the following circumstances:

- the employer breaches an employment contract.
- the termination violates public policy.
- the termination is in retaliation for any one of ten specified employee rights.
- in the case of public employees, the employee has the right to continue employment based on federal, state or local law or regulation.

An employee must bring a claim for wrongful termination within one year after the cause of action accrues. Moreover, in an action for wrongful termination based on breach of contract or a violation of public policy, the Act limits the remedies the employee may pursue to those established for breach of contract or by the statute that underlies the public policy. If a remedy is not established for the specific statute, the employee may seek tort damages.

## **WAGES AND HOURS**

### ***Federal Fair Labor Standards Act (FLSA)***

The FLSA establishes minimum wage, overtime pay, record keeping and child labor standards covering full-time and part-time workers in the private sector and in federal, state and local government. The requirements of the FLSA apply to covered, nonexempt employees as specified in the FLSA. The U.S. Department of Labor (DOL) administers and enforces the FLSA through the Wage and Hour Division of the Employment Standards Administration.

#### ***Minimum Wage***

In May 2007, President George W. Bush signed legislation increasing the minimum wage, the first increase since 1997, from \$5.15/hour to

\$7.25/hour in three phases as follows: 1) as of July 24, 2007, \$5.85/hour; 2) beginning July 24, 2008, \$6.55/hour; and 3) beginning July 24, 2009, \$7.25/hour. Where state law requires a higher minimum wage, the higher standard applies. As of January 1, 2007, Arizona has a state-mandated minimum wage, which is described later in greater detail.

#### ***Overtime***

The FLSA requires most employees in the U.S. to receive overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. Under the DOL's FairPay Rules, workers paid up to \$23,660 annually, or \$455 a week, are automatically guaranteed overtime protection, regardless of title or duty.

#### ***Overtime and Minimum Wage Exemptions***

The FLSA provides several exemptions from both minimum wage and overtime pay, including for employees employed as bona fide executive, administrative, professional and outside sales employees, in addition to certain computer professionals. To qualify for the exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 a week, or on an hourly basis of at least \$27.63 an hour for specified computer professionals. Job title alone does not determine exempt status.

The FLSA establishes a subminimum wage of \$4.25 an hour for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer. It also requires the U.S. Secretary of Labor to provide for the employment, under special certificates, of individuals whose productive capacity is impaired by age, physical or mental deficiency, or injury at wages that are lower than the minimum wage, commensurate with those paid to nonhandicapped workers for essentially the same type, quality and quantity of work, and related to the individual's productivity.

The FLSA sets the employer's cash wage obligation to tipped employees, those who customarily and regularly receive more than \$30 a month in tips, at not less than \$2.13/hour.

However, if an employee's tips combined with the employer's cash wage of \$2.13/hour do not equal the minimum hourly wage, the employer must make up the difference. Arizona law establishes a higher minimum wage for tipped employees.

## *Arizona's Wage and Hour Laws*

### *Minimum Wage*

Previously, Arizona did not have a state mandated minimum wage and statute prohibited political subdivisions from requiring a minimum wage in excess of the federal minimum wage. In November 2006, Arizona's voters approved Proposition 202, which was proposed by initiative petition, establishing a mandatory state minimum wage of \$6.75/hour beginning January 1, 2007. The proposition further required the Industrial Commission of Arizona (ICA) to increase the minimum wage, on January 1 of each year, by the cost of living. Beginning on January 1, 2008, Arizona's minimum wage was \$6.90/hour. Effective January 1, 2009, Arizona's minimum wage will be \$7.25/hour. The Legislature may raise the minimum wage, extend coverage or increase penalties; and political subdivisions may regulate minimum wages and benefits but may not provide for a minimum wage lower than that prescribed by statute. The proposition also established recordkeeping requirements for employers.

The ICA is charged with enforcement and implementation of the minimum wage laws, including the promulgation of consistent regulations. Any person or organization may file an administrative complaint with the ICA charging that an employer has violated the minimum wage requirements. Additionally, any law enforcement officer or private party injured by a violation may maintain a civil action to enforce the requirements.

### *Exceptions to Arizona's Minimum Wage Laws*

Proposition 202 established fewer exceptions to the minimum wage than those

established under the FLSA. Exceptions exist for persons employed by the state or federal government, certain small businesses, or a parent or sibling, and for persons who perform babysitting services in an employer's home on a casual basis. Additionally, employers may pay employees who customarily and regularly receive tips up to \$3.00/hour less than the minimum wage if when tips received and wages paid are added together the employee receives not less than the minimum wage for all hours worked. In this case, Arizona statute requires employers to pay tipped employees more than federal law does, so Arizona employers must comply with state law.

Proposition 202 does not establish an exception similar to that provided in the FLSA for persons with disabilities. On March 29, 2007, the ICA issued a substantive policy statement that establishes that an individual is not an employee if that individual performs work activities for the primary or personal benefit of the individual, as opposed to the employer, without an agreement for compensation. The work activities must be performed by an individual, who has received an independent evaluation of the individual's physical, mental, cognitive and functional abilities and who is determined to be temporarily incapable of employment, as a component of a vocational training program or a service recipient program. The individual may receive a stipend for the work performed. In June 2007, the Legislature exempted from liability, beginning January 1, 2007, an employer or entity that fails to pay the minimum wage due to reliance on a regulation, order, ruling, approval, interpretation or policy of the ICA. Federal law provides a similar exemption from liability.

### *Overtime*

Arizona has no overtime law regarding nonpublic employees. Employers who are covered by the FLSA must comply with that law's overtime provision. Private employers who are not covered by the federal law are not required to pay overtime.

## *Payment of Wages*

Employers, in most cases, must pay employees at least twice per month, no more than 16 days apart and within five of the employer's working days after the end of the pay period. Requirements differ for employers whose payroll services are centralized outside of the state.

An employer may withhold wages when required or empowered to do so by state or federal law (e.g., taxes), when the employer has prior written authorization from the employee or when there is a reasonable good faith dispute as to the amount of wages due.

The law requires that an employee who is discharged receive all wages due within three working days or the end of the next regular pay period, whichever is sooner. School districts must pay wages due the employee within ten calendar days from the date of discharge. If an employee quits, he or she must be paid in the usual manner all wages due him not later than the regular payday for the pay period during which the termination occurred. If the employee requests, the employer must mail such wages.

## *Hours and Youth Employment*

State labor laws do not regulate employee breaks, lunch periods or the number of hours that may be worked, leaving these to the employer's discretion, with some exceptions (e.g., statute stipulates the number of hours that minors under the age of 16 may work, as well as the types of work that minors under the age of 18 may perform).

## **ADDITIONAL RESOURCES**

- Labor Employment Statutes: Arizona Revised Statutes, Title 23, Chapters 2, 8 and 9
- Discrimination in Employment Statutes: Arizona Revised Statutes, Title 41, Chapter 9, Article 4
- Arizona Constitution, Articles 18 and 25
- Arizona Attorney General, Civil Rights Division  
[http://www.azag.gov/civil\\_rights](http://www.azag.gov/civil_rights)  
(602) 542-5263 (Phoenix)  
(800) 491-5742 (Phoenix)  
(520) 628-6500 (Tucson)  
(877) 491-5740 (Tucson)
- Industrial Commission of Arizona, Labor Department  
[www.ica.state.az.us](http://www.ica.state.az.us)  
(602) 542-4515 (Phoenix)  
(520) 628-5459 (Tucson)
- Office for Americans with Disabilities  
[www.azada.gov](http://www.azada.gov)  
(602) 542-6276  
(800) 358-3617
- U.S. Equal Employment Opportunity Commission  
[www.eeoc.gov](http://www.eeoc.gov)  
(800) 669-4000  
(202) 663-4900
- Fair Labor Standards Act: 29 U.S.C. 201, et seq.
- U.S. Department of Labor, Wage and Hour Division  
(866) 487-9243  
[www.dol.gov/dol/topic/wages/index.htm](http://www.dol.gov/dol/topic/wages/index.htm)
- U.S. Department of Labor's FairPay Overtime Initiative  
[www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm](http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm)