

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HOUSE BILL 2474

AN ACT

AMENDING SECTIONS 23-392, 23-901 AND 41-794, ARIZONA REVISED STATUTES;
RELATING TO PUBLIC EMPLOYEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-392, Arizona Revised Statutes, is amended to
3 read:

4 23-392. Overtime compensation for certain law enforcement or
5 probation officer activities; option; definitions

6 A. Any person engaged in law enforcement activities shall be
7 compensated for each hour worked in excess of forty hours in one work week at
8 the option of such employer at the following rates:

9 1. One and one-half times the regular rate at which such person is
10 employed or one and one-half hours of compensatory time off for each hour
11 worked if by the person's job classification overtime compensation is
12 mandated by federal law.

13 2. If by the person's job classification federal law does not mandate
14 overtime compensation, the person shall receive the regular rate of pay or
15 compensatory leave on an hour for hour basis.

16 B. Any person engaged in probation officer activities shall be
17 compensated for each hour worked in excess of eighty hours in a two week work
18 period at the option of such employer at the following rates:

19 1. One and one-half times the regular rate at which such person is
20 employed or one and one-half hours of compensatory time off for each hour
21 worked if by the person's job classification overtime compensation is
22 mandated by federal law.

23 2. If by the person's job classification federal law does not mandate
24 overtime compensation, the person shall receive the regular rate of pay or
25 compensatory leave on an hour for hour basis.

26 C. Paid leave may be considered hours worked for the purpose of
27 calculating overtime.

28 D. The director of the department of public safety may establish
29 alternate work periods, in accordance with federal law, for the purpose of
30 determining overtime compensation for those employees of the air rescue
31 section of the department of public safety.

32 E. Notwithstanding subsection C of this section, an alternate work
33 period established by the director of the department of public safety for the
34 purpose of determining overtime compensation shall not exceed twenty-eight
35 days or one hundred sixty hours.

36 F. For the purposes of this section:

37 1. "Person engaged in law enforcement activities":

38 (a) Means:

39 (i) A law enforcement officer as defined by section 38-1001.

40 (ii) A peace officer as defined by section 41-1701.

41 (iii) Any security personnel responsible for controlling or
42 maintaining custody of inmates in correctional institutions maintained by
43 this state or a county, city or town.

44 (iv) A CAPITOL POLICE OFFICER EMPLOYED PURSUANT TO SECTION 41-794,
45 SUBSECTION A.

1 (b) Does not include any such person employed in a bona fide executive
2 or administrative capacity as defined by the employer.

3 2. "Person engaged in probation officer activities":

4 (a) Means a probation officer or surveillance officer who is appointed
5 pursuant to section 8-203, 12-251 or 12-259.

6 (b) Does not include any such person employed in a bona fide executive
7 or administrative capacity as defined by the employer.

8 Sec. 2. Section 23-901, Arizona Revised Statutes, is amended to read:
9 23-901. Definitions

10 In this chapter, unless the context otherwise requires:

11 1. "Award" means the finding or decision of an administrative law
12 judge or the commission as to the amount of compensation or benefit due an
13 injured employee or the dependents of a deceased employee.

14 2. "Client" means an individual, association, company, firm,
15 partnership, corporation or any other legally recognized entity that is
16 subject to the provisions of this chapter and that enters into a professional
17 employer agreement with a professional employer organization.

18 3. "Co-employee" means every person employed by an injured employee's
19 employer.

20 4. "Commission" means the industrial commission of Arizona.

21 5. "Compensation" means the compensation and benefits provided by this
22 chapter.

23 6. "Employee", "workman", "worker" and "operative" means:

24 (a) Every person in the service of the state or a county, city, town,
25 municipal corporation or school district, including regular members of
26 lawfully constituted police and fire departments of cities and towns, whether
27 by election, appointment or contract of hire.

28 (b) Every person in the service of any employer subject to this
29 chapter, including aliens and minors legally or illegally permitted to work
30 for hire, but not including a person whose employment is both:

31 (i) Casual.

32 (ii) Not in the usual course of the trade, business or occupation of
33 the employer.

34 (c) Lessees of mining property and their employees and contractors
35 engaged in the performance of work which is a part of the business conducted
36 by the lessor and over which the lessor retains supervision or control are
37 within the meaning of this paragraph employees of the lessor, and are deemed
38 to be drawing wages as are usually paid employees for similar work. The
39 lessor may deduct from the proceeds of ores mined by the lessees the premium
40 required by this chapter to be paid for such employees.

41 (d) Regular members of volunteer fire departments organized pursuant
42 to title 48, chapter 5, article 1, regular firemen of any volunteer fire
43 department, including private fire protection service organizations,
44 organized pursuant to title 10, chapters 24 through 40, volunteer firemen
45 serving as members of a fire department of any incorporated city or town or

1 an unincorporated area without pay or without full pay and on a part-time
2 basis, and voluntary policemen and volunteer firemen serving in any
3 incorporated city, town or unincorporated area without pay or without full
4 pay and on a part-time basis, are deemed to be employees, but for the
5 purposes of this chapter, the basis for computing wages for premium payments
6 and compensation benefits for regular members of volunteer fire departments
7 organized pursuant to title 48, chapter 5, article 1, or organized pursuant
8 to title 10, chapters 24 through 40, regular members of any private fire
9 protection service organization, volunteer firemen and volunteer policemen of
10 these departments or organizations shall be the salary equal to the beginning
11 salary of the same rank or grade in the full-time service with the city,
12 town, volunteer fire department or private fire protection service
13 organization, provided if there is no full-time equivalent then the salary
14 equivalent shall be as determined by resolution of the governing body of the
15 city, town or volunteer fire department or corporation.

16 (e) Members of the department of public safety reserve, organized
17 pursuant to section 41-1715, are deemed to be employees. For the purposes of
18 this chapter, the basis for computing wages for premium payments and
19 compensation benefits for a member of the department of public safety reserve
20 who is a peace officer shall be the salary received by officers of the
21 department of public safety for their first month of regular duty as an
22 officer. For members of the department of public safety reserve who are not
23 peace officers, the basis for computing premiums and compensation benefits is
24 four hundred dollars a month.

25 (f) Any person placed in on-the-job evaluation or in on-the-job
26 training under the department of economic security's temporary assistance for
27 needy families program or vocational rehabilitation program shall be deemed
28 to be an employee of the department for the purpose of coverage under the
29 state workers' compensation laws only. The basis for computing premium
30 payments and compensation benefits shall be two hundred dollars per
31 month. Any person receiving vocational rehabilitation services under the
32 department of economic security's vocational rehabilitation program whose
33 major evaluation or training activity is academic, whether as an enrolled
34 attending student or by correspondence, or who is confined to a hospital or
35 penal institution, shall not be deemed to be an employee of the department
36 for any purpose. Any dividend which the department's vocational
37 rehabilitation program may be entitled to receive from the state compensation
38 fund because of a favorable loss experience for any policy period shall not
39 revert to the state general fund but shall be applied to the department's
40 current premium obligations for workers' compensation coverage for such
41 program.

42 (g) Regular members of a volunteer sheriff's reserve, which may be
43 established by resolution of the county board of supervisors, to assist the
44 sheriff in the performance of the sheriff's official duties. A roster of the
45 current members shall monthly be certified to the clerk of the board of

1 supervisors by the sheriff and shall not exceed the maximum number authorized
2 by the board. Certified members of an authorized volunteer sheriff's reserve
3 shall be deemed to be employees of the county for the purpose of coverage
4 under the Arizona workers' compensation laws and occupational disease
5 disability laws and shall be entitled to receive the benefits of these laws
6 for any compensable injuries or disabling conditions which arise out of and
7 occur in the course of the performance of duties authorized and directed by
8 the sheriff. Compensation benefits and premium payments shall be based upon
9 the salary received by a regular full-time deputy sheriff of the county
10 involved for the first month of regular patrol duty as an officer for each
11 certified member of a volunteer sheriff's reserve. This subdivision shall
12 not be construed to provide compensation coverage for any member of a
13 sheriff's posse who is not a certified member of an authorized volunteer
14 sheriff's reserve except as a participant in a search and rescue mission or a
15 search and rescue training mission.

16 (h) A working member of a partnership may be deemed to be an employee
17 entitled to the benefits provided by this chapter upon written acceptance, by
18 endorsement, at the discretion of the insurance carrier for the partnership
19 of an application for coverage by the working partner. The basis for
20 computing premium payments and compensation benefits for the working partner
21 shall be an assumed average monthly wage of not less than six hundred dollars
22 nor more than the maximum wage provided in section 23-1041 and is subject to
23 the discretionary approval of the insurance carrier. Any compensation for
24 permanent partial or permanent total disability payable to the partner shall
25 be computed on the lesser of the assumed monthly wage agreed to by the
26 insurance carrier on the acceptance of the application for coverage or the
27 actual average monthly wage received by the partner at the time of injury.

28 (i) The sole proprietor of a business subject to this chapter may be
29 deemed to be an employee entitled to the benefits provided by this chapter on
30 written acceptance, by endorsement, at the discretion of the insurance
31 carrier of an application for coverage by the sole proprietor. The basis for
32 computing premium payments and compensation benefits for the sole proprietor
33 shall be an assumed average monthly wage of not less than six hundred dollars
34 nor more than the maximum wage provided by section 23-1041 and is subject to
35 the discretionary approval of the insurance carrier. Any compensation for
36 permanent partial or permanent total disability payable to the sole
37 proprietor shall be computed on the lesser of the assumed monthly wage agreed
38 to by the insurance carrier on the acceptance of the application for coverage
39 or the actual average monthly wage received by the sole proprietor at the
40 time of injury.

41 (j) A member of the Arizona national guard, Arizona state guard or
42 unorganized militia shall be deemed a state employee and entitled to coverage
43 under the Arizona workers' compensation law at all times while the member is
44 receiving the payment of the member's military salary from the state of
45 Arizona under competent military orders or upon order of the governor.

1 Compensation benefits shall be based upon the monthly military pay rate to
2 which the member is entitled at the time of injury, but not less than a
3 salary of four hundred dollars per month, nor more than the maximum provided
4 by the workers' compensation law. No Arizona compensation benefits shall
5 inure to a member compensable under federal law.

6 (k) Certified ambulance drivers and attendants who serve without pay
7 or without full pay on a part-time basis are deemed to be employees and
8 entitled to the benefits provided by this chapter and the basis for computing
9 wages for premium payments and compensation benefits for certified ambulance
10 personnel shall be four hundred dollars per month.

11 (l) Volunteer workers of a licensed health care institution may be
12 deemed to be employees and entitled to the benefits provided by this chapter
13 upon written acceptance by the insurance carrier of an application by the
14 health care institution for coverage of such volunteers. The basis for
15 computing wages for premium payments and compensation benefits for volunteers
16 shall be four hundred dollars per month.

17 (m) Personnel who participate in a search or rescue operation or a
18 search or rescue training operation that carries a mission identifier
19 assigned by the division of emergency management as provided in section
20 35-192.01 and who serve without compensation as volunteer state
21 employees. The basis for computation of wages for premium purposes and
22 compensation benefits is the total volunteer man-hours recorded by the
23 division of emergency management in a given quarter multiplied by the amount
24 determined by the appropriate risk management formula.

25 (n) Personnel who participate in emergency management training,
26 exercises or drills that are duly enrolled or registered with the division of
27 emergency management or any political subdivision as provided in section
28 26-314, subsection C and who serve without compensation as volunteer state
29 employees. The basis for computation of wages for premium purposes and
30 compensation benefits is the total volunteer man-hours recorded by the
31 division of emergency management or political subdivision during a given
32 training session, exercise or drill multiplied by the amount determined by
33 the appropriate risk management formula.

34 (o) Regular members of the Arizona game and fish department reserve,
35 organized pursuant to section 17-214. The basis for computing wages for
36 premium payments and compensation benefits for a member of the reserve is the
37 salary received by game rangers and wildlife managers of the Arizona game and
38 fish department for their first month of regular duty.

39 (p) Every person employed pursuant to a professional employer
40 agreement.

41 (q) MEMBERS OF THE DEPARTMENT OF ADMINISTRATION CAPITOL POLICE
42 RESERVE, ORGANIZED PURSUANT TO SECTION 41-794, ARE DEEMED TO BE EMPLOYEES.
43 FOR THE PURPOSES OF THIS CHAPTER, THE BASIS FOR COMPUTING WAGES FOR PREMIUM
44 PAYMENTS AND COMPENSATION BENEFITS FOR A MEMBER OF THE DEPARTMENT OF
45 ADMINISTRATION CAPITOL POLICE RESERVE WHO IS A PEACE OFFICER SHALL BE THE

1 SALARY RECEIVED BY OFFICERS OF THE DEPARTMENT OF ADMINISTRATION FOR THEIR
2 FIRST MONTH OF REGULAR DUTY AS AN OFFICER.

3 7. "General order" means an order applied generally throughout the
4 state to all persons under jurisdiction of the commission.

5 8. "Heart-related or perivascular injury, illness or death" means
6 myocardial infarction, coronary thrombosis or any other similar sudden,
7 violent or acute process involving the heart or perivascular system, or any
8 death resulting therefrom, and any weakness, disease or other condition of
9 the heart or perivascular system, or any death resulting therefrom.

10 9. "Insurance carrier" means the state compensation fund and every
11 insurance carrier duly authorized by the director of insurance to write
12 workers' compensation or occupational disease compensation insurance in the
13 state of Arizona.

14 10. "Interested party" means the employer, the employee, or if the
15 employee is deceased, the surviving spouse or dependents, the commission, the
16 insurance carrier or their representative.

17 11. "Mental injury, illness or condition" means any mental, emotional,
18 psychotic or neurotic injury, illness or condition.

19 12. "Order" means and includes any rule, direction, requirement,
20 standard, determination or decision other than an award or a directive by the
21 commission or an administrative law judge relative to any entitlement to
22 compensation benefits, or to the amount thereof, and any procedural ruling
23 relative to the processing or adjudicating of a compensation matter.

24 13. "Personal injury by accident arising out of and in the course of
25 employment" means any of the following:

26 (a) Personal injury by accident arising out of and in the course of
27 employment.

28 (b) An injury caused by the wilful act of a third person directed
29 against an employee because of the employee's employment, but does not
30 include a disease unless resulting from the injury.

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

35 14. "Professional employer agreement" means a written contract between
36 a client and a professional employer organization:

37 (a) In which the professional employer organization expressly agrees
38 to co-employ all or a majority of the employees providing services for the
39 client. In determining whether the professional employer organization
40 employs all or a majority of the employees of a client, any person employed
41 pursuant to the terms of the professional employer agreement after the
42 initial placement of client employees on the payroll of the professional
43 employer organization shall be included.

44 (b) That is intended to be ongoing rather than temporary in nature.

1 (c) In which employer responsibilities for worksite employees,
2 including hiring, firing and disciplining, are expressly allocated between
3 the professional employer organization and the client in the agreement.

4 15. "Professional employer organization" means any person engaged in
5 the business of providing professional employer services. Professional
6 employer organization does not include a temporary help firm or an employment
7 agency.

8 16. "Professional employer services" means the service of entering into
9 co-employment relationships under this chapter to which all or a majority of
10 the employees providing services to a client or to a division or work unit of
11 a client are covered employees.

12 17. "Special order" means an order other than a general order.

13 18. "State compensation fund" includes the state compensation fund,
14 accident benefit fund and occupational disease compensation fund in existence
15 on January 2, 1969 and shall thereafter include all funds under the
16 jurisdiction of the board of directors of the state compensation fund which
17 have been derived from the assessment of premiums, interest, penalties and
18 investment earnings for the payment of all workers' compensation and
19 occupational disease compensation benefits.

20 19. "Weakness, disease or other condition of the heart or perivascular
21 system" means arteriosclerotic heart disease, cerebral vascular disease,
22 peripheral vascular disease, cardiovascular disease, angina pectoris,
23 congestive heart trouble, coronary insufficiency, ischemia and all other
24 similar weaknesses, diseases and conditions, and also previous episodes or
25 instances of myocardial infarction, coronary thrombosis or any similar
26 sudden, violent or acute process involving the heart or perivascular system.

27 20. "Workers' compensation" means workmen's compensation as used in
28 article XVIII, section 8, Constitution of Arizona.

29 Sec. 3. Section 41-794, Arizona Revised Statutes, is amended to read:
30 41-794. Employment of police personnel; capitol police reserve

31 A. The department shall employ police officers and other personnel as
32 the director deems necessary for the protection and security of the state
33 buildings and grounds in the governmental mall as described by section
34 41-1362 and state office buildings in Tucson and persons who are on those
35 properties.

36 B. The director may provide for a volunteer organization to be known
37 as the capitol police reserve. This organization shall consist of United
38 States citizens who are residents of this state and who render auxiliary
39 support, without compensation, to the department as the director
40 prescribes. This organization may consist of volunteers who are peace
41 officers and volunteers who are not peace officers. The volunteers who are
42 not peace officers shall be United States citizens, United States naturalized
43 citizens or persons lawfully admitted to the United States for permanent
44 residence as defined under federal law.

1 C. The director shall define the powers and duties of the reserve, but
2 these powers and duties shall not be in excess of those accorded to
3 department employees or inconsistent with those powers and duties.

4 D. The director shall issue to each member of the reserve a badge of
5 authority to be used by the members of the reserve for activities authorized
6 by the director. The badge shall be of such design as the director
7 determines, but shall bear the word "reserve" across the face of the badge
8 and shall distinguish between volunteers who are certified peace officers and
9 volunteers who are not certified peace officers.

10 E. A member of the reserve performing activities authorized by the
11 director for an employer is not a state employee for any purpose, including
12 workers' compensation benefits ~~under subsection F~~. An entity employing a
13 reserve officer to perform activities authorized by the director shall file a
14 statement with the department that the employee is the agent of the employer
15 and not an employee of this state.

16 ~~F. While on duty, members of the reserve are deemed state employees~~
17 ~~for the purpose of securing workers' compensation benefits in the same~~
18 ~~manner, under the same conditions and to the same extent as regular state~~
19 ~~employees.~~