

REFERENCE TITLE: unemployment insurance; independent contractor; appeals

State of Arizona
House of Representatives
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HB 2150

Introduced by
Representatives Forese, Mesnard, Senators Murphy, Reagan

AN ACT

AMENDING SECTIONS 23-613.01, 23-671, 23-672 AND 23-724, 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 to
3 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 services
8 and the result to be effected or accomplished. ~~INDICATIONS OF CONTROL BY~~
9 ~~THE EMPLOYING UNIT INCLUDE CONTROLLING THE INDIVIDUAL'S HOURS OF WORK,~~
10 ~~LOCATION OF WORK, RIGHT TO PERFORM SERVICES FOR OTHERS, TOOLS, EQUIPMENT,~~
11 ~~MATERIALS, EXPENSES AND USE OF OTHER WORKERS AND OTHER INDICIA OF EMPLOYMENT,~~
12 except employee does not include:
13 1. An individual who performs services as an independent contractor,
14 business person, agent or consultant, or in a capacity characteristic of an
15 independent profession, trade, skill or occupation.
16 2. An individual subject to the direction, rule or control or subject
17 to the right of direction, rule or control of an employing unit solely
18 because of a provision of law regulating the organization, trade or business
19 of the employing unit.
20 3. An individual or class of individuals that the federal government
21 has decided not to and does not treat as an employee or employees for federal
22 unemployment tax purposes.
23 4. An individual if the employing unit demonstrates the individual
24 performs services in the same manner as a similarly situated class of
25 individuals that the federal government has decided not to and does not treat
26 as an employee or employees for federal unemployment tax purposes.
27 B. Notwithstanding this section, an individual or class of individuals
28 shall not be treated as an employee by the department for purposes of this
29 chapter if, before the department's determination that the individual or
30 class of individuals at issue is an employee:
31 1. The individual or class of individuals had been performing services
32 for the employing unit.
33 2. The department had inspected work records of the employing unit for
34 time periods that the individual or class of individuals had been performing
35 these services.
36 3. The individual or class of individuals at issue was not included on
37 the contribution and wage reports of the employing unit.
38 4. After its inspection the department concluded in writing provided
39 to the employing unit that either:
40 (a) No change or changes in the inspected reports were necessary.
41 (b) The individual or class of individuals in question did not
42 constitute an employee for purposes of this chapter.
43 5. At no time between the date of the written determination prescribed
44 in paragraph 4 of this subsection, and the department's subsequent conclusion
45 that the individual or class of individuals at issue constitutes an employee,

1 did the department notify the employing unit in writing that the individual
2 or class of individuals at issue now constitutes an employee for purposes of
3 this chapter.

4 C. Subsection B of this section shall not apply if either:

5 1. There has been a substantial and material change in the facts upon
6 which the writing required by subsection B, paragraph 4 of this section was
7 based.

8 2. The conclusion reached by the department pursuant to subsection B,
9 paragraph 4 of this section was the result of false statements,
10 misrepresentation, fraud or intimidation on the part of the employing unit.

11 D. The following services are exempt employment under this chapter,
12 unless there is evidence of direction, rule or control sufficient to satisfy
13 the definition of an employee under subsection A of this section, which is
14 distinct from any evidence of direction, rule or control related to or
15 associated with establishing the nature or circumstances of the services
16 considered pursuant to this subsection:

17 1. Services which are not a part or process of the organization, trade
18 or business of an employing unit and which are performed by an individual who
19 is not treated by the employing unit in a manner generally characteristic of
20 the treatment of employees.

21 2. Services performed by an individual for an employing unit through
22 isolated or occasional transactions, regardless of whether such services are
23 a part or process of the organization, trade or business of the employing
24 unit.

25 E. Notwithstanding this section, an individual or class of individuals
26 determined to be an employee or employees for purposes of the federal
27 unemployment tax act, as amended (26 United States Code sections 3301 through
28 3311), are employees under this chapter.

29 F. Notwithstanding any other provision of this chapter, this section
30 shall apply to an employing unit to which the provisions of section 23-750
31 apply only to the extent not inconsistent with the requirements of 26 United
32 States Code sections 3304 ~~(A)(6)~~ (a)(6) and 3309.

33 Sec. 2. Section 23-671, Arizona Revised Statutes, is amended to read:
34 23-671. Appeal tribunals

35 A. The department shall establish one or more impartial appeal
36 tribunals to hear and decide disputed claims. Such appeal tribunals shall
37 consist in each case of one member who shall be a salaried examiner selected
38 on a nonpartisan merit basis. A person shall not participate on behalf of
39 the department in any case in which he is an interested party.

40 B. Within a reasonable time before the date set for a hearing, any
41 interested party to a hearing before the appeal tribunal may file an
42 affidavit for change of appeal tribunal and the department shall immediately
43 transfer the matter to another appeal tribunal. An interested party may
44 electronically file the affidavit for change of appeal tribunal under this
45 subsection. Reasonable time shall be established by regulation. Except for

1 cause not more than one change of appeal tribunal shall be granted to any one
2 party.

3 C. An appeal tribunal may refer any case before it or any question
4 involved therein to the appeals board established pursuant to section 23-672.

5 D. Unless an appeal is withdrawn or the proceedings are removed or
6 referred to the appeals board, an appeal tribunal, after giving reasonable
7 notice and affording all interested parties reasonable opportunity for a fair
8 hearing, shall make a decision. The parties to the appeal shall be promptly
9 notified of the decision and the reasons for the decision. **THE DECISION OF**
10 **THE APPEAL TRIBUNAL SHALL MEET THE REQUIREMENTS OF A DETERMINATION UNDER**
11 **SECTION 23-724, SUBSECTION G.** The decision shall become final unless within
12 ~~fifteen~~ THIRTY days after mailing or electronic transmission of the decision
13 any interested party files a written or electronically transmitted petition
14 for review with the appeals board or the appeals board assumes jurisdiction
15 in accordance with subsection E of this section.

16 E. Before the date on which an appeal tribunal decision becomes final,
17 the appeals board on its own motion may, by notice mailed to all interested
18 parties, either:

19 1. Set aside the decision of the appeal tribunal and remand the
20 proceedings to another appeal tribunal for review and decision.

21 2. Order the taking of additional evidence.

22 3. Remove the proceedings to itself for review and decision.

23 F. If the appeals board removes a case to itself pursuant to this
24 section, the appeals board may order the taking of additional evidence and
25 may affirm, reverse, modify or set aside the decision of the appeal
26 tribunal. The appeals board shall promptly notify the parties to the
27 proceedings of its decision.

28 Sec. 3. Section 23-672, Arizona Revised Statutes, is amended to read:
29 23-672. Appeals board; review of board decision

30 A. Within the department, an appeals board is established consisting
31 of four members. The director shall appoint the members of the appeals board
32 and shall designate one member to serve as chairman.

33 B. Hearings conducted by or at the direction of the appeals board
34 shall be conducted as provided by section 23-674 and other provisions of this
35 chapter. The department shall prescribe by rule the procedures for
36 petitioning for review, removal of cases to the board and appeals under
37 section 23-673. An interested party may file either a written or electronic
38 petition for review. On the filing of a petition for review, the department
39 shall prepare a complete record unless the parties stipulate otherwise.

40 C. In any case in which a petition for review of an appeal tribunal or
41 hearing officer decision has been filed by an interested party, the appeals
42 board may remand the case to any appeal tribunal or hearing officer for
43 further proceedings or may review the matter on the basis of the record in
44 the case, take additional evidence or rehear the matter and affirm, reverse,
45 modify or set aside the decision of the appeal tribunal or hearing officer.

1 On notice to the interested parties, a petition for review may be reviewed by
2 one member of the appeals board designated by the chairman. If an interested
3 party objects to review by one board member, the matter shall be heard by
4 three members of the appeals board.

5 D. Unless a petition for hearing or review of a department
6 determination made under article 5 of this chapter is withdrawn, the appeals
7 board after affording the parties reasonable opportunity for a fair hearing
8 shall issue its decision.

9 E. Every decision of the appeals board shall be in writing. If the
10 decision is issued by three members of the appeals board, and the appeals
11 board is not unanimous, the decision of the majority shall control. The
12 minority may file a dissent from the decision, setting forth the reasons for
13 the dissent. **THE DECISION OF THE APPEALS BOARD SHALL MEET THE REQUIREMENTS**
14 **OF A DETERMINATION UNDER SECTION 23-724, SUBSECTION G.** All interested
15 parties shall be promptly notified of the decision and the reasons for the
16 decision. Notice to the parties of the decision shall be accompanied by
17 instructions explaining the procedure for requesting review as described in
18 subsection F of this section and clearly indicating the final date for filing
19 a request for review.

20 F. A party dissatisfied with the decision under subsection E of this
21 section may file a request for review within thirty days from the date of the
22 decision, which shall be a written or electronic request and memorandum
23 stating the reasons why the appeals board's decision is in error and
24 containing appropriate citations of the record, rules and other authority. On
25 motion, and for good cause, the appeals board may extend the time for filing
26 a request for review. The timely filing of such a request for review is a
27 prerequisite to any further appeal. The appeals board shall notify all
28 parties of the filing of a request for review and shall allow fifteen days
29 from the date of the notice for any party to respond. Thereafter, the
30 appeals board shall issue a decision on review affirming, modifying or
31 reversing its decision, or ordering the taking of additional testimony. All
32 parties shall be given written notice by mail of the decision on review.

33 Sec. 4. Section 23-724, Arizona Revised Statutes, is amended to read:

34 **23-724. Liability determinations; review; finality**

35 A. When the department makes a determination, which determination
36 shall be made either on the motion of the department or on application of an
37 employing unit, that an employing unit constitutes an employer as defined in
38 section 23-613 or that services performed for or in connection with the
39 business of an employing unit constitute employment as defined in section
40 23-615 that is not exempt under section 23-617 or that remuneration for
41 services constitutes wages as defined in section 23-622, the determination
42 shall become final with respect to the employing unit ~~fifteen~~ **SIXTY** days
43 after written notice is served personally, by electronic transmission or by
44 **CERTIFIED** mail addressed to the last known address of the employing unit,

1 unless within such time the employing unit files a written request for
2 reconsideration.

3 B. When a request for reconsideration is filed as prescribed in
4 subsection A of this section, a reconsidered determination shall be made. The
5 reconsidered determination shall become final with respect to the employing
6 unit thirty days after written notice of the reconsidered determination is
7 served personally, by electronic transmission or by mail addressed to the
8 last known address of the employing unit, unless within such time the
9 employing unit files with the appeals board a written petition for hearing or
10 review. The department may for good cause extend the period within which the
11 written petition is to be submitted. If the reconsidered determination is
12 appealed to the appeals board and the decision by the appeals board is that
13 the employing unit is liable, the employing unit shall submit all required
14 contribution and wage reports to the department within forty-five days after
15 the decision by the appeals board.

16 C. On an employer's written request and the submission of pertinent
17 information to the department, the department shall, or on its own motion
18 may, consider whether a determination, reconsidered determination or decision
19 which has become final should be revised. Revision shall be granted if
20 either:

21 1. There has been a substantial and material change in the facts on
22 which the determination, reconsidered determination or decision relied.

23 2. There has been a change in the law or interpretation of the law
24 which warrants a revised determination, reconsidered determination or
25 decision.

26 D. The effective date of a revision under subsection C of this section
27 is either:

28 1. The date on which the change occurred if the employer's request
29 with the pertinent information is filed no later than the last day of the
30 month immediately subsequent to the calendar quarter in which the change
31 occurred.

32 2. The first day of the calendar quarter in which the employer files
33 the request and submits the pertinent information unless the employer
34 demonstrates to the satisfaction of the department that good cause exists for
35 the failure to notify the department within the period prescribed by
36 paragraph 1 of this subsection of the occurrence of the change warranting the
37 revision. In the event such good cause is demonstrated, the effective date
38 shall be the date of the change.

39 E. A refusal to grant relief under subsection C of this section may
40 not be appealed unless within ~~fifteen~~ THIRTY days the employer appeals the
41 refusal to the appeals board. Notwithstanding any other provision of law and
42 pursuant to such an appeal, the appeals board may initiate hearings to obtain
43 information and issue a decision as to whether the relief requested in
44 subsection C of this section should be granted. Thereafter, the appeals
45 board shall issue a decision in the matter. The decision may not be appealed

1 with respect to the employing unit unless petition for review and request for
2 review are filed within the time and in the manner provided in section
3 23-672.

4 F. The determination of the department or decision of the appeals
5 board, together with the record, shall be admissible in any subsequent
6 judicial proceeding involving liability for contributions. A determination
7 or decision that an employing unit is liable that has become final shall be
8 conclusive and binding on the employing unit and shall not be reconsidered in
9 proceedings brought before the department or a hearing officer.

10 G. Any DETERMINATION ISSUED PURSUANT TO SUBSECTION A OF THIS SECTION
11 AND ANY reconsidered determination issued pursuant to subsection B of this
12 section and any contribution rate redetermination or denial issued pursuant
13 to section 23-732, subsection A shall contain the following:

14 1. The facts considered and the facts relied on in making the
15 determination.

16 2. The specific statutes, regulations or other authority relied on in
17 making the determination.

18 3. The reasoning applied in making the determination.

19 4. The appeal rights related to the determination and the time period
20 after which the determination becomes final.

21 H. If any determination covered by subsection G of this section is
22 defective because it fails to meet the requirements of subsection G of this
23 section, the defect may be cured by issuance of a corrected, amended or new
24 determination. If a defect is alleged and specified in writing within the
25 period for appeal, all time periods applicable to the determination are
26 suspended pending the curative action.

27 I. This section does not preclude the department from at any time
28 correcting clerical errors that have occurred in the administration of this
29 chapter.

30 J. A determination, reconsidered determination, revision or refusal to
31 grant relief under this section may be served by electronic means if the
32 party being served consents in writing to service by electronic means.
33 Service by electronic means is deemed complete on transmission.