

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 115
HOUSE BILL 2150

AN ACT

AMENDING SECTIONS 23-613.01, 23-671 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,
46 did the department notify the employing unit in writing that the individual

1 or class of individuals at issue now constitutes an employee for purposes of
2 this chapter.

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

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

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

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

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

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

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

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

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

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

39 B. Within a reasonable time before the date set for a hearing, any
40 interested party to a hearing before the appeal tribunal may file an
41 affidavit for change of appeal tribunal and the department shall immediately
42 transfer the matter to another appeal tribunal. An interested party may
43 electronically file the affidavit for change of appeal tribunal under this
44 subsection. Reasonable time shall be established by regulation. Except for
45 cause not more than one change of appeal tribunal shall be granted to any one
46 party.

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

3 D. Unless an appeal is withdrawn or the proceedings are removed or
4 referred to the appeals board, an appeal tribunal, after giving reasonable
5 notice and affording all interested parties reasonable opportunity for a fair
6 hearing, shall make a decision. The parties to the appeal shall be promptly
7 notified of the decision and the reasons for the decision. The decision
8 shall become final unless within ~~fifteen~~ THIRTY days after mailing or
9 electronic transmission of the decision any interested party files a written
10 or electronically transmitted petition for review with the appeals board or
11 the appeals board assumes jurisdiction in accordance with subsection E of
12 this section.

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

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

18 2. Order the taking of additional evidence.

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

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

25 Sec. 3. Section 23-724, Arizona Revised Statutes, is amended to read:

26 ~~23-724.~~ Liability determinations; review; finality

27 A. When the department makes a determination, which determination
28 shall be made either on the motion of the department or on application of an
29 employing unit, that an employing unit constitutes an employer as defined in
30 section 23-613 or that services performed for or in connection with the
31 business of an employing unit constitute employment as defined in section
32 23-615 that is not exempt under section 23-617 or that remuneration for
33 services constitutes wages as defined in section 23-622, the determination
34 shall become final with respect to the employing unit ~~fifteen~~ SIXTY days
35 after written notice is served personally, by electronic transmission or by
36 CERTIFIED mail IF THE DETERMINATION WAS MADE ON THE BASIS OF SECTION
37 23-613.01, OR BY FIRST CLASS MAIL IF THE DETERMINATION WAS MADE BY ANY OTHER
38 BASIS, addressed to the last known address of the employing unit, unless
39 within such time the employing unit files a written request for
40 reconsideration.

41 B. When a request for reconsideration is filed as prescribed in
42 subsection A of this section, a reconsidered determination shall be made. The
43 reconsidered determination shall become final with respect to the employing
44 unit thirty days after written notice of the reconsidered determination is
45 served personally, by electronic transmission or by mail addressed to the
46 last known address of the employing unit, unless within such time the

1 employing unit files with the appeals board a written petition for hearing or
2 review. The department may for good cause extend the period within which the
3 written petition is to be submitted. If the reconsidered determination is
4 appealed to the appeals board and the decision by the appeals board is that
5 the employing unit is liable, the employing unit shall submit all required
6 contribution and wage reports to the department within forty-five days after
7 the decision by the appeals board.

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

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

15 2. There has been a change in the law or interpretation of the law
16 which warrants a revised determination, reconsidered determination or
17 decision.

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

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

24 2. The first day of the calendar quarter in which the employer files
25 the request and submits the pertinent information unless the employer
26 demonstrates to the satisfaction of the department that good cause exists for
27 the failure to notify the department within the period prescribed by
28 paragraph 1 of this subsection of the occurrence of the change warranting the
29 revision. In the event such good cause is demonstrated, the effective date
30 shall be the date of the change.

31 E. A refusal to grant relief under subsection C of this section may
32 not be appealed unless within ~~fifteen~~ THIRTY days the employer appeals the
33 refusal to the appeals board. Notwithstanding any other provision of law and
34 pursuant to such an appeal, the appeals board may initiate hearings to obtain
35 information and issue a decision as to whether the relief requested in
36 subsection C of this section should be granted. Thereafter, the appeals
37 board shall issue a decision in the matter. The decision may not be appealed
38 with respect to the employing unit unless petition for review and request for
39 review are filed within the time and in the manner provided in section
40 23-672.

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

7 G. Any DETERMINATION ISSUED ON THE BASIS OF SECTION 23-613.01 PURSUANT
8 TO SUBSECTION A OF THIS SECTION AND ANY reconsidered determination issued
9 pursuant to subsection B of this section and any contribution rate
10 redetermination or denial issued pursuant to section 23-732, subsection A
11 shall contain the following:

12 1. The facts considered and the facts relied on in making the
13 determination.

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

16 3. The reasoning applied in making the determination.

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

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

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

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

APPROVED BY THE GOVERNOR MARCH 29, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 29, 2012.