

REFERENCE TITLE: unemployment insurance; reimbursable employers

State of Arizona  
Senate  
Fifty-second Legislature  
First Regular Session  
2015

# SB 1343

Introduced by  
Senator Griffin

AN ACT

AMENDING SECTIONS 23-617 AND 23-750, ARIZONA REVISED STATUTES; RELATING TO  
UNEMPLOYMENT INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-617, Arizona Revised Statutes, is amended to  
3 read:

4 23-617. Exempt employment; definition

5 "Exempt employment" means employment not considered in determining  
6 whether an employing unit constitutes an "employer" under this chapter and  
7 includes:

8 1. Agricultural labor as defined in section 23-603 unless the labor is  
9 performed for an employing unit that after December 31, 1977 either:

10 (a) For some portion of a day, but not necessarily simultaneously, in  
11 each of twenty different calendar weeks, whether or not the weeks are or were  
12 consecutive, in either the current or the preceding calendar year, employed  
13 in agricultural labor at least ten individuals irrespective of whether the  
14 same individuals were employed in each day.

15 (b) In any calendar quarter in either the current or preceding  
16 calendar year paid cash wages of twenty thousand dollars or more for  
17 agricultural labor.

18 2. Domestic service in a private home, local college club, or local  
19 chapter of a college fraternity or sorority unless performed after  
20 December 31, 1977, for an employing unit that in any calendar quarter in  
21 either the current or preceding calendar year paid cash wages of one thousand  
22 dollars or more to individuals employed in that service.

23 3. Service performed on or in connection with a vessel or aircraft  
24 that is not an American vessel or American aircraft, if the employee is  
25 employed on and in connection with the vessel or aircraft when outside the  
26 United States.

27 4. Service performed by an individual in the employ of the  
28 individual's son, daughter, ~~or~~ spouse, and service performed by an  
29 individual under twenty-one years of age in the employ of the individual's  
30 father or mother.

31 5. Service performed in the employ of the United States government or  
32 an instrumentality of the United States that is wholly or partially owned by  
33 the United States or that is exempt from the tax imposed by section 3301 of  
34 the federal internal revenue code, except that to the extent Congress ~~shall~~  
35 ~~permit~~ PERMITS states to require instrumentalities of the United States to  
36 make payments into an unemployment fund under a state unemployment  
37 compensation law, ~~all of the provisions of~~ this chapter ~~shall be~~ IS  
38 applicable to the instrumentalities, in the same manner, to the same extent  
39 and on the same terms as to all other employers, employing units, individuals  
40 and services, but if this state is not certified for any year by the  
41 secretary of labor of the United States under section 3304 of the federal  
42 internal revenue code, the payments required of the instrumentalities with  
43 respect to the year shall be refunded by the department from the fund in the  
44 same manner and within the same period as is provided in section 23-742 with  
45 respect to contributions erroneously collected.

1           6. Service performed in the employ of another state, or any political  
2 subdivision of another state, or an instrumentality of another state or  
3 another state's political subdivision that is wholly owned by one or more  
4 other states or political subdivisions and that exercises only governmental  
5 as distinguished from proprietary functions, and service performed in the  
6 employ of any political subdivisions of this or any other state to the extent  
7 the instrumentality, with respect to the service, is exempt under the  
8 Constitution of the United States from the tax imposed by section 3301 of the  
9 federal internal revenue code, except that part of the service performed in  
10 the employ of any of the foregoing that is "employment" under section 23-615,  
11 subsection A, paragraph 6, 7 or 8. But any state, or a political subdivision  
12 of a state, or instrumentality of any one or more of the foregoing that is  
13 wholly owned by one or more states or political subdivisions may elect  
14 coverage whether or not the service performed is governmental or proprietary  
15 for any state or political subdivision thereof or any instrumentality thereof  
16 or any department thereof in the manner prescribed and subject to the terms  
17 of section 23-725, and election may exclude any services described in section  
18 23-615, subsection B. This state or any instrumentality or political  
19 subdivision of this state may appropriate funds to pay contributions or  
20 payments in lieu of contributions as required by this chapter.

21           7. Service with respect to which unemployment compensation is payable  
22 under an unemployment compensation system established by an act of Congress.

23           8. Service performed in any calendar quarter in the employ of an  
24 organization exempt from income tax under section 501(a) (other than an  
25 organization described in section 401(a)) or under section 521 of the federal  
26 internal revenue code, if the remuneration for such service is less than  
27 fifty dollars.

28           9. Service performed in the employ of a school, college or university,  
29 if the service is performed either:

30           (a) By a student enrolled and regularly attending classes at the  
31 school, college or university.

32           (b) By the spouse of a student if the spouse is advised at the time  
33 the spouse commences to perform the service that the employment is provided  
34 under a program to provide financial assistance to the student by the school,  
35 college or university and the employment will not be covered by any program  
36 of unemployment compensation.

37           10. Service performed in the employ of a corporation, community chest  
38 fund, or foundation, organized and operated exclusively for religious,  
39 charitable, scientific, testing for public safety, literary, or educational  
40 purposes, or for the prevention of cruelty to children or animals, no part of  
41 the net earnings of which inures to the benefit of a private shareholder or  
42 individual, no substantial part of the activities of which is carrying on  
43 propaganda or otherwise attempting to influence legislation, and that does  
44 not participate in or intervene in (including the publishing or distributing  
45 of statements) any political campaign on behalf of any candidate for public

1 office; provided that services performed in the employ of an organization  
2 operated for the primary purpose of carrying on a trade or business for  
3 profit shall not be exempt on the ground that all of its profits are payable  
4 to one or more organizations exempt under this paragraph, and further  
5 provided that services exempt under this paragraph shall not include services  
6 performed for an employing unit with respect to which the employing unit is  
7 liable for any federal tax against which credit may be taken for  
8 contributions required to be paid into a state unemployment compensation  
9 fund, and further provided that services exempt under this paragraph shall  
10 not include services that are "employment" under section 23-615, subsection  
11 ~~B-~~ A, paragraph 6, 7 or 8.

12 11. Services performed as a student nurse in the employ of a hospital  
13 or a nurses' training school by an individual enrolled and regularly  
14 attending classes in a nurses' training school chartered or approved pursuant  
15 to state law, and service performed as an interne in the employ of a hospital  
16 by an individual who has completed a four years' course in a medical school  
17 chartered or approved pursuant to state law.

18 12. Service performed by an individual for an employing unit as an  
19 insurance producer, if all service performed by the individual for the  
20 employing unit is performed for remuneration solely by way of commission.

21 13. Service performed by an individual under the age of eighteen in the  
22 delivery or distribution of newspapers or shopping news, not including  
23 delivery or distribution to any point for subsequent delivery or  
24 distribution, and service performed by an individual in, and at the time of,  
25 the sale of newspapers or magazines to ultimate consumers under an  
26 arrangement by which the newspapers or magazines are to be sold by the  
27 individual at a fixed price, the individual's compensation being based on the  
28 retention of the excess of such price over the amount at which the newspapers  
29 or magazines are charged to the individual, whether or not the individual is  
30 guaranteed a minimum amount of compensation for such service, or is entitled  
31 to be credited with the unsold newspapers or magazines turned back.

32 14. Service performed by an individual for an employing unit as a  
33 licensed real estate broker or a licensed cemetery broker or a licensed real  
34 estate salesman or licensed cemetery salesman, if all service performed by  
35 the individual for the employing unit is performed for remuneration solely by  
36 way of commission, except that any service performed as a real estate broker,  
37 a cemetery broker, a real estate salesman or a cemetery salesman for an  
38 employing unit to which ~~the provisions of~~ section 23-750 ~~apply~~ APPLIES is not  
39 exempt employment.

40 15. Service performed in the employ of a foreign government including  
41 service as a consular or other officer or employee or a nondiplomatic  
42 representative.

43 16. Service performed in the employ of an instrumentality wholly owned  
44 by a foreign government if both:

1 (a) The service is of a character similar to that performed in foreign  
2 countries by employees of the United States government or of an  
3 instrumentality of the United States government.

4 (b) The department finds that the United States secretary of state has  
5 certified to the United States secretary of the treasury that the foreign  
6 government with respect to whose instrumentality exemption is claimed grants  
7 an equivalent exemption with respect to similar service performed in the  
8 foreign country by employees of the United States government and of  
9 instrumentalities of the United States government.

10 17. Service covered by an arrangement between the department and the  
11 agency charged with the administration of any other state or federal  
12 unemployment compensation law pursuant to which all services performed by an  
13 individual for an employing unit during the period covered by the employing  
14 unit's duly approved election are deemed to be performed entirely within the  
15 agency's state.

16 18. Casual labor not in the course of the employer's trade or business.

17 19. Service performed by an individual for an employing unit as a  
18 securities salesman, if all such service performed by the individual for the  
19 employing unit is performed for remuneration solely by way of commission,  
20 except that any service performed as a securities salesman for an employing  
21 unit to which ~~the provisions of~~ section 23-750 ~~apply~~ APPLIES is not exempt  
22 employment.

23 20. During any period in which it does not meet the definition of  
24 employment in section 23-615, subsection A, paragraph 10, service performed  
25 by an individual who is enrolled at a nonprofit or public educational  
26 institution that normally maintains a regular faculty and curriculum and  
27 normally has a regularly organized body of students in attendance at the  
28 place where the institution's educational activities are carried on as a  
29 student in a full-time program, and taken for credit at the institution,  
30 which combines academic instruction with work experience, if the service is  
31 an integral part of the program, and the institution has so certified to the  
32 employer, except that this paragraph shall not apply to service performed in  
33 a program established for or on behalf of an employer or group of employers.

34 21. Service performed in the employ of a hospital if the service is  
35 performed by a patient of the hospital.

36 22. Service performed by individuals solely to the extent that the  
37 compensation includes commissions, overrides or profits realized on sales  
38 primarily resulting from the in-person solicitation of orders for or making  
39 sales of consumer goods in the home, except that any service performed by an  
40 individual for an employing unit to which ~~the provisions of~~ section 23-750  
41 ~~apply~~ APPLIES is not exempt employment.

42 23. Services performed by an individual for an employing unit in the  
43 preparation of tax returns and related schedules and documents, if all  
44 services are performed for remuneration solely by way of commissions,  
45 independent of the control of the employing unit, other than that required by

1 the internal revenue service for correct preparation of the returns, except  
2 that any service performed by an individual for an employing unit to which  
3 ~~the provisions of~~ section 23-750 ~~apply~~ APPLIES is not exempt employment.

4 Sec. 2. Section 23-750, Arizona Revised Statutes, is amended to read:

5 23-750. Special provisions for nonprofit organizations and  
6 state and local governments

7 A. The provisions of this section apply to:

8 1. Any nonprofit organization described in ~~paragraph 10 of~~ section  
9 23-617, PARAGRAPH 10, ~~which~~ THAT but for the provisions of section 23-613,  
10 subsection A, paragraph 2, subdivision (c) would not be subject to this  
11 chapter, or ~~which~~ THAT is not mandatorily subject to this chapter because of  
12 insufficient employees but ~~which~~ THAT has voluntarily elected to become  
13 subject to this chapter.

14 2. This state, or a political subdivision ~~thereof~~ OF THIS STATE, or  
15 any instrumentality, agency or board of any one or more of the foregoing or  
16 any instrumentality of any of the foregoing and one or more other states or  
17 political subdivisions.

18 B. Benefits paid to employees of employing units to which this section  
19 applies shall be financed ~~in accordance with the provisions of~~ PURSUANT TO  
20 this subsection. ~~AS FOLLOWS:~~

21 1. Any employing unit to which this section applies:

22 (a) ~~Which~~ THAT is or becomes subject to this chapter on January 1,  
23 1972, may elect to become liable for payments in lieu of contributions for a  
24 period of not less than three consecutive taxable years beginning with  
25 January 1, 1972, provided it files with the department a written notice of  
26 its election not later than sixty days after written notice that ~~such~~ THE  
27 election may be made is first given to the employing unit by the department.

28 (b) ~~Which~~ THAT becomes subject to this chapter after January 1, 1972,  
29 may elect to become liable for payments in lieu of contributions for a period  
30 of not less than three consecutive taxable years by filing a written notice  
31 of its election with the department not later than thirty days immediately  
32 ~~following~~ AFTER the date of the determination of such subjectivity.

33 (c) ~~Which~~ THAT makes an election in accordance with subdivision (a) or  
34 (b) of this paragraph shall continue to be liable for payments in lieu of  
35 contributions until it files with the department a written notice terminating  
36 its election not later than thirty days ~~prior to~~ BEFORE the beginning of the  
37 taxable year for which ~~such~~ THE termination shall first be effective.

38 (d) ~~Which~~ THAT has been paying contributions under this chapter  
39 subsequent to January 1, 1972, for a period of not less than three  
40 consecutive taxable years may elect to become liable for payments in lieu of  
41 contributions for a period of not less than three consecutive taxable years  
42 by filing a written notice of its election with the department not later than  
43 thirty days ~~prior to~~ BEFORE the beginning of the taxable year for which ~~such~~  
44 THE election shall first be effective.

1           2. The department may for good cause extend the period within which a  
2 notice of election or a notice of termination must be filed.

3           3. The department shall notify the employing unit of any determination  
4 made of its status as an employer and of the effective date of any election  
5 or termination of ~~such~~ THE election made in accordance with this subsection.  
6 ~~Such~~ THE determination shall be subject to reconsideration, petition for  
7 hearing, and judicial review in accordance with the provisions of section  
8 23-724.

9           4. An employing unit shall pay to the department for the fund an  
10 amount equal to the amount of regular benefits and of one-half of the  
11 extended benefits paid ~~which~~ THAT were based ~~upon~~ ON wages paid during the  
12 employing unit's period of election to make payments in lieu of  
13 contributions, except that a governmental entity shall pay to the department  
14 for the fund an amount equal to the total amount of extended benefits paid  
15 for weeks of unemployment beginning on or after January 1, 1979, ~~which~~ THAT  
16 are based ~~upon~~ ON wages paid by the governmental entity during its election  
17 to make payments in lieu of contributions. The provisions of SECTION 23-727,  
18 SUBSECTIONS D, E, F, G, I AND J AND sections ~~23-727,~~ 23-773 and 23-777,  
19 insofar as they apply to noncharging an employer's account for benefit  
20 payments, do not apply to benefits paid ~~which~~ THAT were based ~~upon~~ ON wages  
21 paid during the employing unit's period of election to make payments in lieu  
22 of contributions.

23           C. As soon as practicable after the end of each calendar quarter the  
24 department shall determine the amount of payments in lieu of contributions  
25 due from each employing unit and shall bill each employing unit for the  
26 amount due. If payment is not made on or before the date due and payable as  
27 prescribed by the department, the whole or part thereafter remaining unpaid  
28 shall bear interest at the rate of one ~~per cent~~ PERCENT per month or fraction  
29 thereof, from and after the due date until payment is received by the  
30 department. The amount of payments due ~~hereunder~~ but not paid may be  
31 collected by the department, together with interest and penalties, if any, in  
32 the same manner and subject to the same conditions as contributions due from  
33 other employers. The amount due specified in any bill from the department  
34 shall be conclusive and binding on the employing unit unless not later than  
35 fifteen days after the bill was mailed to its last known address, the  
36 employing unit files an application for redetermination. A redetermination  
37 made under this subsection shall be subject to petition for hearing and  
38 judicial review in accordance with ~~the provisions of~~ section 23-724.

39           D. Two or more employing units that have become liable for payments in  
40 lieu of contributions may file a joint application to the department for the  
41 establishment of a group account for the purpose of sharing the cost of  
42 benefits paid that are attributable to service in the employ of ~~such~~ THE  
43 employing units. Each application shall identify and authorize a group  
44 representative to act as the group's agent for the purposes of this  
45 subsection. ~~Upon~~ ON approval of the application, the department shall

1 establish a group account for such employing units effective as of the  
2 beginning of the calendar quarter in which the application is received and  
3 shall notify the group's representative of the effective date of the account.  
4 The account shall remain in effect for ~~not less than~~ AT LEAST three years and  
5 thereafter until terminated at the discretion of the department or ~~upon~~ ON  
6 application by the group. ~~Upon~~ ON establishment of the account, each member  
7 of the group shall be liable for payments in lieu of contributions with  
8 respect to each calendar quarter in the amount that bears the same ratio to  
9 the total benefits paid in ~~such~~ THAT quarter that are attributable to service  
10 performed in the employ of all members of the group as the total wages paid  
11 for service in employment by ~~such~~ THE member in ~~such~~ THAT quarter bear to the  
12 total wages paid during ~~such~~ THAT quarter for service performed in the employ  
13 of all members of the group. The department shall prescribe ~~such~~ regulations  
14 as it deems necessary with respect to applications for establishment,  
15 maintenance, and termination of group accounts that are authorized by this  
16 subsection, for addition of new members to, and withdrawal of active members  
17 from, ~~such~~ THE accounts, and for the determination of the amounts that are  
18 payable under this subsection by members of the group and the time and manner  
19 of ~~such~~ THE payments.

20 E. Benefits are payable on the basis of employment to which this  
21 section applies, in the same amount, on the same terms, and subject to the  
22 same conditions as benefits payable on the basis of other employment subject  
23 to this chapter, except that notwithstanding ~~the provisions of~~ sections  
24 23-779 and 23-780:

25 1. Benefits based on service in an instructional, research, or  
26 principal administrative capacity for an educational institution shall not be  
27 paid to an individual for any week of unemployment ~~which~~ THAT begins during  
28 the period between two successive academic years, or during a similar period  
29 between two regular terms, whether or not successive, or during a period of  
30 paid sabbatical leave provided for in the individual's contract, if the  
31 individual performs ~~such~~ THE services in the first ~~of such~~ academic ~~years~~  
32 YEAR or ~~terms~~ TERM and if there is a contract or a reasonable assurance that  
33 ~~such~~ THE individual will perform services in any such capacity for any  
34 educational institution in the second ~~of such~~ academic ~~years~~ YEAR or ~~terms~~  
35 TERM.

36 2. Benefits based on service in any other capacity for an educational  
37 institution shall not be paid to an individual for any week of unemployment  
38 ~~which~~ THAT begins during a period between two successive academic years or  
39 terms if the individual performs such services in the first of such academic  
40 years or terms and if there is a reasonable assurance that ~~such~~ THE  
41 individual will perform ~~such~~ THE services in the second ~~of such~~ academic  
42 ~~years~~ YEAR or ~~terms~~ TERM, except that if benefits are denied to any  
43 individual under this paragraph and that individual was not offered an  
44 opportunity to perform ~~such~~ services for the educational institution for the  
45 second ~~of such~~ academic ~~years~~ YEAR or ~~terms~~ TERM, the individual is entitled

1 to a retroactive payment of benefits for each week for which the individual  
2 filed a timely claim for benefits and for which benefits were denied solely  
3 by reason of this paragraph.

4 3. Benefits based on services described in paragraph 1 or 2 of this  
5 subsection shall not be paid to an individual for any week of unemployment  
6 ~~which~~ THAT begins during an established and customary vacation period or  
7 holiday recess if the individual performs ~~such~~ THE services in the period  
8 immediately before ~~such~~ THE vacation period or holiday recess and if there is  
9 a reasonable assurance that ~~such~~ THE individual will perform ~~such~~ THE  
10 services in the period immediately following ~~such~~ THE vacation period or  
11 holiday recess.

12 4. With respect to any services described in paragraph 1 or 2 of this  
13 subsection, benefits are not payable on the basis of services in any capacity  
14 specified in paragraph 1, 2 or 3 of this subsection to any individual who  
15 performed ~~such~~ THE services in an educational institution while in the employ  
16 of an educational service agency. For the purposes of this paragraph,  
17 "educational service agency" means a governmental agency or governmental  
18 entity ~~which~~ THAT is established and operated exclusively for the purpose of  
19 providing such services to one or more educational institutions.

20 5. With respect to services described in paragraph 1, 2 or 3 of this  
21 subsection, benefits are not payable on the basis of services specified in  
22 paragraph 1, 2 or 3 of this subsection to any individual who performed these  
23 services while in the employ of an entity that provides these services to or  
24 on behalf of an educational institution.

25 F. In determining contribution rates assigned to employers under this  
26 chapter, the payrolls of employing units liable for payments in lieu of  
27 contributions shall not be included in computing the contribution rates to be  
28 assigned to employers under this chapter. The payments in lieu of  
29 contributions made by ~~such~~ THE employing units shall be included in the total  
30 assets of the fund in the same manner as contributions paid by other  
31 employers.

32 G. Except as inconsistent with the provisions of this section, the  
33 provisions of this chapter and regulations of the department shall apply to  
34 any matter arising pursuant to this section.