

REFERENCE TITLE: occupational disease; post-traumatic stress disorder

State of Arizona
Senate
Fifty-second Legislature
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2015

SB 1443

Introduced by
Senators Smith, Miranda; Representative Thorpe; Senators Begay, Contreras,
Shooter; Representative Robson

AN ACT

AMENDING SECTION 23-901 AND 23-901.01, ARIZONA REVISED STATUTES; RELATING TO
WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-901, Arizona Revised Statutes, is amended to
3 read:

4 23-901. Definitions

5 In this chapter, unless the context otherwise requires:

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

9 2. "Client" means an individual, association, company, firm,
10 partnership, corporation or any other legally recognized entity that is
11 subject to this chapter and that enters into a professional employer
12 agreement with a professional employer organization.

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

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

16 5. "Compensation" means the compensation and benefits provided by this
17 chapter.

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

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

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

26 (i) Casual.

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

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

36 (d) Regular members of volunteer fire departments organized pursuant
37 to title 48, chapter 5, article 1, regular firemen of any volunteer fire
38 department, including private fire protection service organizations,
39 organized pursuant to title 10, chapters 24 through 40, volunteer firemen
40 serving as members of a fire department of any incorporated city or town or
41 an unincorporated area without pay or without full pay and on a part-time
42 basis, and voluntary policemen and volunteer firemen serving in any
43 incorporated city, town or unincorporated area without pay or without full
44 pay and on a part-time basis, are deemed to be employees, but for the
45 purposes of this chapter, the basis for computing wages for premium payments

1 and compensation benefits for regular members of volunteer fire departments
2 organized pursuant to title 48, chapter 5, article 1, or organized pursuant
3 to title 10, chapters 24 through 40, regular members of any private fire
4 protection service organization, volunteer firemen and volunteer policemen of
5 these departments or organizations shall be the salary equal to the beginning
6 salary of the same rank or grade in the full-time service with the city,
7 town, volunteer fire department or private fire protection service
8 organization, provided if there is no full-time equivalent then the salary
9 equivalent shall be as determined by resolution of the governing body of the
10 city, town or volunteer fire department or corporation.

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

20 (f) Any person placed in on-the-job evaluation or in on-the-job
21 training under the department of economic security's temporary assistance for
22 needy families program or vocational rehabilitation program shall be deemed
23 to be an employee of the department for the purpose of coverage under the
24 state workers' compensation laws only. The basis for computing premium
25 payments and compensation benefits shall be two hundred dollars per month.
26 Any person receiving vocational rehabilitation services under the department
27 of economic security's vocational rehabilitation program whose major
28 evaluation or training activity is academic, whether as an enrolled attending
29 student or by correspondence, or who is confined to a hospital or penal
30 institution, shall not be deemed to be an employee of the department for any
31 purpose.

32 (g) Regular members of a volunteer sheriff's reserve, which may be
33 established by resolution of the county board of supervisors, to assist the
34 sheriff in the performance of the sheriff's official duties. A roster of the
35 current members shall monthly be certified to the clerk of the board of
36 supervisors by the sheriff and shall not exceed the maximum number authorized
37 by the board. Certified members of an authorized volunteer sheriff's reserve
38 shall be deemed to be employees of the county for the purpose of coverage
39 under the Arizona workers' compensation laws and occupational disease
40 disability laws and shall be entitled to receive the benefits of these laws
41 for any compensable injuries or disabling conditions that arise out of and
42 occur in the course of the performance of duties authorized and directed by
43 the sheriff. Compensation benefits and premium payments shall be based ~~upon~~
44 **ON** the salary received by a regular full-time deputy sheriff of the county
45 involved for the first month of regular patrol duty as an officer for each

1 certified member of a volunteer sheriff's reserve. This subdivision ~~shall~~
2 ~~not be construed to~~ DOES NOT provide compensation coverage for any member of
3 a sheriff's posse who is not a certified member of an authorized volunteer
4 sheriff's reserve except as a participant in a search and rescue mission or a
5 search and rescue training mission.

6 (h) A working member of a partnership may be deemed to be an employee
7 entitled to the benefits provided by this chapter ~~upon~~ ON written acceptance,
8 by endorsement, at the discretion of the insurance carrier for the
9 partnership of an application for coverage by the working partner. The basis
10 for computing premium payments and compensation benefits for the working
11 partner shall be an assumed average monthly wage of ~~not less than~~ AT LEAST
12 six hundred dollars ~~nor~~ BUT NOT more than the maximum wage provided in
13 section 23-1041 and is subject to the discretionary approval of the insurance
14 carrier. Any compensation for permanent partial or permanent total
15 disability payable to the partner shall be computed on the lesser of the
16 assumed monthly wage agreed to by the insurance carrier on the acceptance of
17 the application for coverage or the actual average monthly wage received by
18 the partner at the time of injury.

19 (i) The sole proprietor of a business subject to this chapter may be
20 deemed to be an employee entitled to the benefits provided by this chapter on
21 written acceptance, by endorsement, at the discretion of the insurance
22 carrier of an application for coverage by the sole proprietor. The basis for
23 computing premium payments and compensation benefits for the sole proprietor
24 shall be an assumed average monthly wage of ~~not less than~~ AT LEAST six
25 hundred dollars ~~nor~~ BUT NOT more than the maximum wage provided by section
26 23-1041 and is subject to the discretionary approval of the insurance
27 carrier. Any compensation for permanent partial or permanent total
28 disability payable to the sole proprietor shall be computed on the lesser of
29 the assumed monthly wage agreed to by the insurance carrier on the acceptance
30 of the application for coverage or the actual average monthly wage received
31 by the sole proprietor at the time of injury.

32 (j) A member of the Arizona national guard, Arizona state guard or
33 unorganized militia shall be deemed a state employee and entitled to coverage
34 under the Arizona workers' compensation law at all times while the member is
35 receiving the payment of the member's military salary from the state of
36 Arizona under competent military orders or ~~upon~~ ON order of the governor.
37 Compensation benefits shall be based ~~upon~~ ON the monthly military pay rate to
38 which the member is entitled at the time of injury, ~~but not less than a~~
39 ~~salary~~ of AT LEAST four hundred dollars per month, ~~nor~~ BUT NOT more than the
40 maximum provided by the workers' compensation law. ~~No~~ Arizona compensation
41 benefits shall NOT inure to a member compensable under federal law.

42 (k) Certified ambulance drivers and attendants who serve without pay
43 or without full pay on a part-time basis are deemed to be employees and
44 entitled to the benefits provided by this chapter and the basis for computing

1 wages for premium payments and compensation benefits for certified ambulance
2 personnel shall be four hundred dollars per month.

3 (l) Volunteer workers of a licensed health care institution may be
4 deemed to be employees and entitled to the benefits provided by this chapter
5 ~~upon~~ ON written acceptance by the insurance carrier of an application by the
6 health care institution for coverage of ~~such~~ THE volunteers. The basis for
7 computing wages for premium payments and compensation benefits for volunteers
8 shall be four hundred dollars per month.

9 (m) Personnel who participate in a search or rescue operation or a
10 search or rescue training operation that carries a mission identifier
11 assigned by the division of emergency management as provided in section
12 35-192.01 and who serve without compensation as volunteer state employees.
13 The basis for computation of wages for premium purposes and compensation
14 benefits is the total volunteer man-hours recorded by the division of
15 emergency management in a given quarter multiplied by the amount determined
16 by the appropriate risk management formula.

17 (n) Personnel who participate in emergency management training,
18 exercises or drills that are duly enrolled or registered with the division of
19 emergency management or any political subdivision as provided in section
20 26-314, subsection C 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 or political subdivision during a given
24 training session, exercise or drill multiplied by the amount determined by
25 the appropriate risk management formula.

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

31 (p) Every person employed pursuant to a professional employer
32 agreement.

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

35 8. "Heart-related or perivascular injury, illness or death" means
36 myocardial infarction, coronary thrombosis or any other similar sudden,
37 violent or acute process involving the heart or perivascular system, or any
38 death resulting therefrom, and any weakness, disease or other condition of
39 the heart or perivascular system, or any death resulting therefrom.

40 9. "Insurance carrier" means every insurance carrier duly authorized
41 by the director of insurance to write workers' compensation or occupational
42 disease compensation insurance in ~~the~~ THIS state ~~of Arizona~~.

43 10. "Interested party" means the employer, the employee, or if the
44 employee is deceased, the employee's estate, the surviving spouse or
45 dependents, the commission, the insurance carrier or their representative.

1 11. "Mental injury, illness or condition" means any mental, emotional,
2 psychotic or neurotic injury, illness or condition.

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

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

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

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

15 (c) An occupational disease OR POST-TRAUMATIC STRESS DISORDER that is
16 due to causes and conditions characteristic of and peculiar to a particular
17 trade, occupation, process or employment, and not the ordinary diseases to
18 which the general public is exposed, and subject to section 23-901.01.

19 14. "POST-TRAUMATIC STRESS DISORDER" HAS THE SAME MEANING PRESCRIBED
20 IN THE MOST RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL
21 DISORDERS FOR THE AMERICAN PSYCHIATRIC ASSOCIATION.

22 ~~14.~~ 15 "Professional employer agreement" means a written contract
23 between a client and a professional employer organization:

24 (a) In which the professional employer organization expressly agrees
25 to co-employ all or a majority of the employees providing services for the
26 client. In determining whether the professional employer organization
27 employs all or a majority of the employees of a client, any person employed
28 pursuant to the terms of the professional employer agreement after the
29 initial placement of client employees on the payroll of the professional
30 employer organization shall be included.

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

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

35 ~~15.~~ 16. "Professional employer organization" means any person engaged
36 in the business of providing professional employer services. Professional
37 employer organization does not include a temporary help firm or an employment
38 agency.

39 ~~16.~~ 17. "Professional employer services" means the service of entering
40 into co-employment relationships under this chapter to which all or a
41 majority of the employees providing services to a client or to a division or
42 work unit of a client are covered employees.

43 ~~17.~~ 18. "Special order" means an order other than a general order.

44 ~~18.~~ 19. "Weakness, disease or other condition of the heart or
45 perivascular system" means arteriosclerotic heart disease, cerebral vascular

1 disease, peripheral vascular disease, cardiovascular disease, angina
2 pectoris, congestive heart trouble, coronary insufficiency, ischemia and all
3 other similar weaknesses, diseases and conditions, and also previous episodes
4 or instances of myocardial infarction, coronary thrombosis or any similar
5 sudden, violent or acute process involving the heart or perivascular system.
6 ~~19.~~ 20. "Workers' compensation" means workmen's compensation as used
7 in article XVIII, section 8, Constitution of Arizona.

8 Sec. 2. Section 23-901.01, Arizona Revised Statutes, is amended to
9 read:

10 23-901.01. Occupational disease; post-traumatic stress disorder
11 proximate causation; definitions

12 A. The occupational diseases as defined by section 23-901, paragraph
13 13, subdivision (c) shall be deemed to arise out of the employment only if
14 all of the following six requirements exist:

15 1. There is a direct causal connection between the conditions under
16 which the work is performed and the occupational disease.

17 2. The disease can be seen to have followed as a natural incident of
18 the work as a result of the exposure occasioned by the nature of the
19 employment.

20 3. The disease can be fairly traced to the employment as the proximate
21 cause.

22 4. The disease does not come from a hazard to which workers would have
23 been equally exposed outside of the employment.

24 5. The disease is incidental to the character of the business and not
25 independent of the relation of employer and employee.

26 6. The disease after its contraction appears to have had its origin in
27 a risk connected with the employment, and to have flowed from that source as
28 a natural consequence, although it need not have been foreseen or expected.

29 B. Notwithstanding subsection A of this section and section
30 23-1043.01, any disease, infirmity or impairment of a firefighter's or peace
31 officer's health that is caused by brain, bladder, rectal or colon cancer,
32 lymphoma, leukemia, ~~or aden carcinoma~~ ADENOCARCINOMA or mesothelioma of the
33 respiratory tract OR POST-TRAUMATIC STRESS DISORDER and that results in
34 disability or death is presumed to be an occupational disease as defined in
35 section 23-901, paragraph 13, subdivision (c) and is deemed to arise out of
36 employment. The presumption is granted if all of the following apply:

37 1. The firefighter or peace officer passed a physical examination
38 before employment and the examination did not indicate evidence of cancer OR
39 POST-TRAUMATIC STRESS DISORDER.

40 2. FOR CLAIMS RELATING TO THE CANCERS PROVIDED IN THIS SUBSECTION, the
41 firefighter or peace officer was assigned to hazardous duty for at least five
42 years.

43 3. The firefighter or peace officer was exposed to a known carcinogen
44 as defined by the international agency for research on cancer and informed
45 the department of this exposure, and the carcinogen is reasonably related to

1 the cancer OR WAS EXPOSED TO AN ENVIRONMENT THAT IS CONSISTENT WITH CAUSING
2 POST-TRAUMATIC STRESS DISORDER.

3 C. Subsection B of this section applies to former firefighters and
4 peace officers who are sixty-five years of age or younger.

5 D. Subsection B of this section does not apply to cancers of the
6 respiratory tract if the firefighter or peace officer has smoked tobacco
7 products.

8 E. For the purposes of this section:

9 1. "Firefighter" means a full-time firefighter who was regularly
10 assigned to hazardous duty.

11 2. "Peace officer" means ~~a~~ ANY full-time ~~peace~~ POLICE officer,
12 HIGHWAY PATROL OFFICER, PROBATION OFFICER OR CORRECTIONS OFFICER, IN ADDITION
13 TO ANY OFFICER who was regularly assigned to hazardous duty as a part of a
14 special operations, special weapons and tactics, explosive ordinance disposal
15 or hazardous materials response unit.