



Arizona State Senate Issue Brief

November 10, 2022

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Issue Briefs* series is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Nothing in the Brief should be used to draw conclusions on the legality of an issue.

LABOR EMPLOYMENT LAWS

INTRODUCTION

Employment in Arizona is regulated by both federal and state law. Some issues, such as union membership and minimum wage, are regulated by federal and state laws, whereas other issues are addressed only by federal law or state law, but not both. In other instances, such as employment discrimination, Arizona has essentially codified federal law which provides the Arizona Attorney General (AG) with the power of enforcement.

RIGHT-TO-WORK

Arizona is one of 28 states with “right-to-work” laws. The Arizona Constitution and state statute states, “No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization, nor shall the State or any subdivision thereof, or any corporation, individual or association of any kind enter into any agreement, written or oral, which excludes any person from employment or continuation of employment because of non-membership in a labor organization.” This provision, effective since 1946, prohibits conditioning employment on union membership and prohibits unions from requiring employers to hire only union employees.¹

The National Labor Relations Act (NLRA) defines the right of most private sector employees, with specific exceptions, to organize and to collectively bargain with their employers through representatives of their own choosing, or not to do so. According to the National Labor Relations Board, which enforces the NLRA, the act allows a union and an employer to make a union-security agreement under certain conditions. A union-security agreement requires employees to make certain payments to the union as a condition of retaining employment, but the agreement cannot require employees to be union members. Under a union-security agreement, individuals choosing not to be members may be required to pay full initiation fees and dues that unions may expend only on activities related to collective bargaining, contract administration and grievance adjustment.

¹ [Arizona Const. art. 25; A.R.S. § 23-1302](#)

In right-to-work states, unions may not ask employers to, and employers cannot agree to, enter into union-security agreements. Employees cannot be required to either join the union or pay the equivalent dues in order to remain employed. Employees who want to join can do so with all the privileges of membership, such as participation in contract negotiations, ratification of the contract, voting on a decision to strike and voting for leadership. Nonmembers are generally denied those privileges, but are accorded any contractual benefits. In addition, the union has a duty to represent all employees fairly without regard to their membership status.²

DISCRIMINATION IN EMPLOYMENT

Civil Rights Act of 1964

Title VII of the federal Civil Rights Act (CRA) protects individuals from discrimination on the basis of race, color, national origin, sex and religion in regard to any term, condition or privilege of employment. It prohibits not only intentional discrimination, but also job policies that disproportionately affect certain groups of persons that are not related to the job and the needs of the business. The CRA applies to employers with 15 or more employees and is enforced on the federal level by the U.S. Equal Employment Opportunity Commission (EEOC).³

Americans with Disabilities Act of 1990

Title I of the federal Americans with Disabilities Act (ADA) prohibits private and public employers from discriminating against qualified individuals with disabilities in regard to any term, condition or privilege of employment. Like the CRA, it covers employers with 15 or more employees and is enforced by the EEOC. An employee is considered to have a disability if they: 1) have a physical or mental impairment that substantially limits one or more major life activities; 2) have a record of such impairment;

or 3) are regarded as having such an impairment. “*Major life activities*” include caring for oneself, walking, seeing, hearing, speaking, learning and the operation of a major bodily function. A qualified employee or applicant with a disability is an individual who, despite having a disability, can perform the essential functions of the particular job, either with or without a reasonable accommodation. *Reasonable accommodation* may include: 1) making existing facilities readily accessible to and usable by persons with disabilities; 2) job restructuring; 3) modifying work schedules; 4) acquiring or modifying equipment; 5) adjusting examinations, training materials or policies; and 6) providing qualified readers or interpreters. An employer must make an accommodation if it would not impose undue hardship on the employer’s business.⁴

Arizona’s Civil Rights Laws

Arizona’s civil rights statutes codify the CRA and ADA, allowing the AG to enforce both laws. Statute prohibits an employer from failing or refusing to hire, discharging or from otherwise discriminating against an individual with respect to the individual’s compensation or terms, condition or privileges of employment because of the individual’s race, color, religion, sex, age, disability or national origin. It also prohibits an employer from limiting, segregating or classifying employees or prospective employees in any way that deprives any individual from employment opportunities or otherwise adversely affects the individual’s status as an employee because of the individual’s race, color, religion, sex, age, disability or national origin.⁵

AT-WILL EMPLOYMENT

Historically, employment for an indefinite period of time has been considered at-will employment that can be terminated by either the employer or the employee at any time with or without cause or notice. Arizona’s Employment

² 29 U.S.C. §§ 151-169

³ 42 U.S.C. §§ 2000e-2000e-17

⁴ 42 U.S.C. §§ 12101-12213; 29 C.F.R. § 1630.2

⁵ A.R.S. Title 41, Ch. 9

Protection Act of 1996 (Act) codifies the at-will doctrine by establishing that the employment relationship is contractual in nature and severable at the pleasure of either the employee or the employer, unless the employment relationship is varied by a written contract that is: 1) signed by the employer and employee; 2) set forth in an employment handbook or similar document distributed to employees; or 3) set forth in a writing signed by the party to be charged (usually the employer).

The Act also limits employees' claims for wrongful termination. Under the Act, an employee has a claim only under the following circumstances:

- the employer breaches an employment contract;
- the termination violates public policy;
- the termination is in retaliation for any 10 specified employee rights; or
- in the case of public employees, the employee has the right to continue employment based on federal, state or local law or regulation.

An employee must bring a claim for wrongful termination within one year after the cause of action accrues. In an action for wrongful termination based on breach of contract or a violation of public policy, the Act limits the remedies the employee may pursue to those established for breach of contract or by the statute that underlies the public policy. If a remedy is not established for the specific statute, the employee may seek tort damages.⁶

FEDERAL WAGE AND HOUR LAWS

Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping and child labor standards that apply to full-time and part-time workers in the private and public sectors. Employees may be classified as

⁶ A.R.S. §§ [12-541](#), [23-1501](#) and [23-1502](#)

covered, nonexempt employees under the FLSA based on their employer's volume of sales or business or the type of activities engaged in by the employer or employee. The U.S. Department of Labor (DOL) administers and enforces the FLSA through the Wage and Hour Division of the Employment Standards Administration.⁷

Minimum Wage

In May 2007, President George W. Bush signed legislation increasing the federal minimum wage, the first increase since 1997, from \$5.15/hour to \$7.25/hour in three phases as follows: 1) beginning July 24, 2007, \$5.85/hour; 2) beginning July 24, 2008, \$6.55/hour; and 3) beginning July 24, 2009, \$7.25/hour.⁸ Where state law requires a higher minimum wage, the higher standard applies.

Overtime

The FLSA requires nonexempt employees to receive overtime pay at time and one-half of the regular rate of pay for all hours worked over 40 hours in a workweek.⁹ Under the DOL regulations, workers paid less than \$35,568 annually, or \$684 a week, are automatically guaranteed overtime protection, regardless of title or duty.¹⁰

Overtime and Minimum Wage Exemptions

The FLSA provides several exemptions from both minimum wage and overtime pay, including for employees employed as executive, administrative, professional and outside sales employees, in addition to certain computer professionals. To qualify for the exemption, employees generally must meet certain criteria regarding their job duties and be paid on a salary basis of at least \$684 a week, or on an hourly basis of at least \$27.63 an hour for specified

⁷ [29 U.S.C. §§ 201-219](#);
DOL: [Wages and the Fair Labor Standards Act](#)

⁸ DOL: [Minimum Wage](#)

⁹ DOL: [Overtime Pay](#)

¹⁰ [29 C.F.R. 541](#)

computer professionals. Job title alone does not determine exempt status.¹¹

The FLSA establishes a subminimum wage of \$4.25 an hour for employees under 20 years of age during the first 90 consecutive calendar days after initial employment with an employer. It also requires the U.S. Secretary of Labor to grant employers special certificates allowing wage rates below the minimum wage for certain individuals, including learners, full-time students employed by certain establishments and individuals whose productive capacity is impaired by a physical or mental disability, including those related to age or injury. For each submission wage category, FLSA and DOL regulations prescribe the subminimum wage and conditions for issuing a special certificate. A subminimum wage for a worker with a disability must be commensurate, based on the worker's individual productivity, to the wage paid to a worker without a disability for essentially the same type, quality and quantity of work.¹²

The FLSA sets the employer's direct wage obligation to tipped employees, those who customarily and regularly receive more than \$30 a month in tips, at not less than \$2.13/hour. However, if an employee's tips combined with the employer's direct wage of \$2.13/hour do not equal the minimum hourly wage, the employer must make up the difference. Arizona law establishes a higher minimum wage for tipped employees.¹³

ARIZONA'S WAGE AND HOUR LAWS

Minimum Wage and Sick Time

Until 2007, Arizona did not have a state minimum wage and statute prohibited political subdivisions from requiring a minimum wage higher than the federal minimum wage. In November 2006, Arizona voters approved a voter initiative, effective January 1, 2007, that

established a mandatory state minimum wage of \$6.75/hour and required the Industrial Commission of Arizona (ICA) to annually increase the minimum wage by the cost of living. The proposition also specified that the Legislature could increase the minimum wage and granted counties, cities and towns the authority to regulate minimum wages, except for setting a minimum wage lower than the state minimum. Employers may pay employees who customarily and regularly receive tips up to \$3.00/hour less than the minimum wage if, when tips received are added to wages paid for each week, the employee receives not less than the minimum wage for all hours worked.¹⁴

In November 2016, Arizona voters approved Proposition 206, the Fair Wages and Healthy Families Act (Act), increasing the state's hourly minimum wage in four stages from \$10.00 in 2017, to \$12.00 by 2020, and then by the cost of living each subsequent year. In 2022, the minimum hourly wage is \$12.80 and will be \$13.85 in 2023.¹⁵

The Act also entitles employees to earn 1 hour of paid sick time for every 30 hours worked, up to 24 hours annually if the employer has fewer than 15 employees and up to 40 hours annually if the employer has at least 15 employees. In either case, employers may select a higher limit for accrual and use of earned paid sick time per year.¹⁶

The ICA is charged with enforcement and implementation of the Act, including the promulgation of consistent regulations. Any person or organization may file an administrative complaint with the ICA charging that an employer has violated the minimum wage requirements. Additionally, a law enforcement officer or any private party injured by a violation may maintain a civil action to enforce the requirements.¹⁷

¹¹ [DOL: Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees](#)

¹² [DOL: Subminimum Wage](#)

¹³ [DOL: Tips](#)

¹⁴ [AZ SOS: Proposition 202 \(2006\)](#)

¹⁵ [ICA: Minimum Wage](#)

¹⁶ [A.R.S. § 23-372](#)

¹⁷ [A.R.S. Title 23, Chapter 2, Article 8 and 8.1; AZ SOS: Proposition 206 \(2016\); A.R.S. § 23-363](#)

Retaliation

An employer may not discriminate or subject a person to retaliation for asserting a minimum wage or earned paid sick leave claim, informing a person about their rights or participating in enforcement investigations or proceedings. *Retaliation* is the denial of minimum wage or earned paid sick time to an employee or any threat, discharge, suspension, demotion, reduction of hours or any other adverse action against an employee for the exercising their right.

An employer that takes an adverse action against an employee within 90 days of the employee engaging in a protected action is presumed to be guilty of retaliation. The presumption may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons. Employers guilty of retaliation are required to pay the employee an amount set by the ICA or a court to compensate the employee and deter future violations that is at least \$150.00 for each day the violation continued.¹⁸

Payment of Wages

In most cases, employers must pay employees at least twice per month, no more than 16 days apart and within five of the employer's working days after the end of the pay period. Requirements differ for employers whose payroll services are centralized outside of Arizona.¹⁹

An employer may withhold wages when required or empowered to do so by Arizona or federal law (e.g., taxes), when the employer has prior written authorization from the employee or when there is a reasonable good faith dispute as to the amount of wages due.²⁰

An employee who is discharged must receive all wages due within seven working days or by the end of the next regular pay period, whichever

is sooner. School districts must pay wages due to an employee within 10 calendar days from the date of discharge. An employee who quits, must be paid in the usual manner with all wages due not later than the regular payday for the pay period during which the termination occurred. If the employee requests, the employer must mail such wages.²¹

Hours and Youth Employment

State labor laws do not regulate employee breaks, lunch periods or the number of hours that may be worked, leaving these to the employer's discretion, with some exceptions. Statute stipulates the number of hours that minors under the age of 16 may work, as well as the types of work that minors under the age of 18 may perform.²²

¹⁸ A.R.S. §§ [23-364](#) and [23-374](#)

¹⁹ A.R.S. § [23-351](#)

²⁰ A.R.S. § [23-352](#)

²¹ [A.R.S. § 23-353](#)

²² [A.R.S. Title 23, Chapter 2, Articles 3 and 5](#)

ADDITIONAL RESOURCES

- Labor Employment Statutes: [A.R.S. Title 23, Chapters 2, 8 and 9](#)
- Discrimination in Employment Statutes: [A.R.S. Title 41, Chapter 9, Article 4](#)
- Arizona Constitution, Articles [18](#) and [25](#)
- Americans with Disabilities Act: [42 U.S.C. 12101, et seq.](#)
- Civil Rights Act, Title VII: [42 U.S.C. § 2000e, et seq.](#)
- Fair Labor Standards Act: [29 U.S.C. 201, et seq.](#)
- National Labor Relations Act: [29 U.S.C. 151, et seq.](#)
- Arizona Attorney General, Civil Rights Division
http://www.azag.gov/civil_rights
(602) 542-5263 (Phoenix)
(877) 491-5742 (Phoenix)
(520) 628-6500 (Tucson)
(877) 491-5740 (Tucson)
- Industrial Commission of Arizona, Labor Department
www.ica.state.az.us
(602) 542-4515 (Phoenix)
(520) 628-5459 (Tucson)
- Office for Americans with Disabilities
www.know-the-ada.com
(602) 542-6276
(800) 358-3617
- U.S. Equal Employment Opportunity Commission
www.eeoc.gov
(800) 669-4000
(202) 921-3191
- U.S. Department of Labor, Wage and Hour Division
(866) 487-9243
[Handy Reference Guide to the FLSA](#)