



Arizona State Senate Issue Brief

August 3, 2018

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 *Research 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.

WORKERS' COMPENSATION

INTRODUCTION

The Arizona workers' compensation system requires employers to cover employee medical treatment and lost wages associated with workplace injuries. Under the Workers' Compensation Act of 1926, the Legislature is constitutionally required to enact workers' compensation laws to protect employees without reliance on, "burdensome, expensive and litigious remedies."¹ Title 23 of the Arizona Revised Statutes contains the legislatively enacted remedies, compensation benefits and oversight mechanisms of the workers' compensation system.

EXCLUSIVE REMEDY

An employee's right to recover damages from the employer or the employer's insurance carrier is an exclusive remedy in most cases.² An *exclusive remedy* provides compensation and medical benefits to injured employees, regardless of their assumption of risk, whether the employee was partially at fault for their injury or whether another employee's action contributed to the accident. Under this no-fault system, employers that have secured workers' compensation coverage cannot be sued for tort damages in the event of a work-related injury, illness or death. Arizona employers must secure workers' compensation through an insurance carrier that is authorized by the Arizona Department of Insurance to write workers' compensation policies. An employer may also satisfy this obligation by furnishing satisfactory proof of financial ability to pay compensation directly or through an approved self-insurance pool.³ Self-insured employers are regulated by the Industrial Commission of Arizona.

Employers must conspicuously post a notice disclosing employees' exclusive remedy and their option to reject compulsory compensation. An employee electing to reject coverage under the Workers' Compensation Act must attest in writing to specific provisions prescribed by statute.⁴ Rejecting employees are ineligible

¹Arizona Constitution, Article 18 § 8

²A.R.S. § 23-1022

³A.R.S. § 23-961

⁴A.R.S. § 23-906

for workers' compensation benefits but retain the right to sue their employer in court. State, county, city, town, school district, fire district, municipal corporation and political subdivision employees may not reject coverage under the Workers' Compensation Act.⁵

The exclusive remedy does not extend to injuries or death caused by employer acts that are, "done knowingly and purposely with the direct object of injuring another."⁶ An employee or dependent may sue to recover damages for willful misconduct that is the personal act of an employer, co-employee, partner or officer of a corporation.

COMPENSABLE INJURIES

An employee or dependent has a right to compensation for injury or death caused by an accident arising out of and in the course of employment if: a) the employment caused or contributed to the injury; b) the employment created a necessary risk or danger inherent to the nature of the employment; or c) the employer, its agent or other employees failed to exercise due care or comply with relevant employment laws.⁷

In general, an injury *arises out of employment* if the cause producing the accident flows from a source within the employment.⁸ The employee may be required to prove a legally sufficient connection between the employment and resulting injury.⁹ Necessary or inherent risks of the employment, including unforeseeable risks,¹⁰ generally arise out of employment even if the work does not increase the risk of injury.¹¹ A purposely self-inflicted injury never arises out of employment,² but an assault willfully perpetrated by a third-party against an employee because of their occupation may qualify for compensation.¹²

A disease may arise out of employment if caused by the unique conditions of a particular trade. Occupational diseases, unlike other diseases to which the general public is exposed, must have an origin and proximate cause connected to the employment.¹³ The Legislature has enumerated specific heart diseases¹⁴ and types of cancer⁷ that are presumed to have arisen out of employment for a peace officer or firefighter.

An injury qualifies as occurring *in the course of employment* based on the **time, place and circumstances** under which the harm occurred. To be compensable, the injury normally must arise within the time period of employment, at a place where the work might reasonably be expected to occur and while the employee was engaged in some activity related to the employment.¹⁵ *Course of employment* is a fact-based determination, but Arizona courts have established specific parameters in some instances, including:

- 1) An employee is usually in the course of employment while eating lunch, smoking, using bathroom facilities or making a personal phone call while on the employer's premises or at an authorized location;¹⁶
- 2) An employee is generally not in the course of employment while going to and from work,¹⁷ but workers commuting along a customary or reasonable route on the employer's premises may be in the course of employment;¹⁸
- 3) An employee injured during travel on a public road between two employer locations is usually acting in the course of employment; and¹⁹
- 4) An employee performing an off-premise errand for the employer may be in the course of employment if the errand is a major reason for travel and not incidental to the travel.²⁰

⁵Attorney General Opinion 64-12

⁶A.R.S. § 23-1022

⁷A.R.S. § 23-1021

⁸*City of Phoenix v. Industrial Comm'n*, 1969

⁹*LaPare v. Industrial Comm'n*, 1979

¹⁰*Larson, Workers' Compensation*, 1976

¹¹*Circle K Store No. 1131 v. Industrial Comm'n*, 1990

¹²A.R.S. § 23-901

¹³A.R.S. § 23-901.01

¹⁴A.R.S. § 23-1105

¹⁵*Goodyear Aircraft Corp. v. Gilbert*, 1947

¹⁶*Petersen v. Industrial Comm'n*, 1982

¹⁷*Butler v. Industrial Comm'n*, 1937

¹⁸*Pauley v. Industrial Comm'n*, 1973

¹⁹*Knoop v. Industrial Comm'n*, 1978.

²⁰*Cavness v. Industrial Comm'n*, 1952

MEDICAL AND LOST WAGE BENEFITS

Employees receive workers' compensation benefits for medical treatment and lost wages. After notifying the employer of the injury, an employee must receive medical, surgical and hospital benefits promptly and throughout the period of disability.²¹ The employee must file a worker's compensation claim within one year from the date of the injury's manifestation (or the date when the employee knows or should have known a work-related injury was sustained).²² An injured employee with an accepted claim for workers' compensation is not responsible for any portion of the medical bill or any payment disputes between providers and insurers.²³ An employer may direct an injured employee to a physician for a one-time evaluation. Following the initial visit, most injured workers may pursue treatment with the physician of his or her choosing. A self-insured employer, however, may direct the employee to specific providers, facilities or pharmacies.²⁴ Medical benefits include travel reimbursement and translation services in some circumstances.

Lost wage benefits are computed based on the employee's average monthly wage, ability to return to gainful employment and length or permanence of the sustained injury. The average monthly wage is based on earnings at the time of the injury, up to the statutory maximum. The Industrial Commission of Arizona adjusts the statutory maximum every year based on the Bureau of Labor Statistics cost index.²⁵ The maximum average monthly wage for calendar year 2018 is \$4,625.92.²⁶

Temporary Partial Disability is compensation paid to an employee who is unable to return to their pre-injury status, but can perform modified or limited job duties. During the period of temporary partial disability, the

employee receives 66 2/3 percent of the difference between the wages earned before the injury and the wages earned while on modified duty.²⁷

Temporary Total Disability is compensation paid to an employee who is temporarily unable to work in any capacity. During the period of temporary total disability, the injured worker receives 66 2/3 percent of their average monthly wage. An employee with dependents will receive an additional \$25 total per month.²⁸

Permanent Partial Disability is compensation paid to an employee who has sustained a permanent impairment due to their work-related injury or illness. If applicable, the employee may first receive temporary total disability payments followed by permanent partial disability payments.²³ Disability payments may be scheduled or unscheduled:

- 1) Scheduled: A specific *schedule* of permanent partial disability benefits is established for injuries involving appendages, teeth, eyesight and hearing.²⁹ This schedule has fixed calculations based on the degree of permanent impairment and the number of months' worth of disability associated with each scheduled body part. Benefits are calculated at 50 percent of the average monthly wage, if the employee sustained a partial functional loss of the body part. Benefits are calculated at 55 percent of the average monthly wage, if the employee sustained a total functional loss of the body part. Benefits are calculated at 75 percent of the average monthly wage, if the employee is unable to return to their pre-injury job due to their injury.
- 2) Unscheduled: Injuries involving the trunk of the body, internal organs, hips, shoulders, mental injury or a combination of two separate scheduled injuries are considered *unscheduled*. The injured worker receives 55

²¹A.R.S. § 23-1062

²²A.R.S. § 23-1061

²³A.R.S. § 23-1062.01

²⁴A.R.S. § 23-1070

²⁵A.R.S. § 23-1041

²⁶[Industrial Commission of Arizona](#)

²⁷A.R.S. § 23-1044

²⁸A.R.S. § 23-1045

²⁹A.R.S. § 23-1044(B)

percent of the difference between the average monthly wage and the ability to earn wages in an open labor market after the injury, known as the *loss in earning capacity* (LEC)." LEC calculation includes wages 'rolled back' to the date of injury to account for the present-day value of earning capacity. Benefits may be increased, reduced or eliminated if the employee's condition or earning capacity changes.

Permanent Total Disability is compensation paid to a permanently disabled employee who is unable to resume work in any capacity. The injured worker receives 66 2/3 percent of their average monthly wage throughout their lifetime.²⁴

Death Benefits are paid to the family of a deceased employee. Payments equal to 66 2/3 percent of the average monthly wage previously earned by the employee are distributed to immediate family members based on the age and status of the surviving spouse and/or surviving children.³⁰

- 1) Spouse: Benefits to a spouse continue as long as the surviving spouse remains unmarried. Arizona will recognize a common-law marriage if recognized under the laws of another authority. In the case of remarriage, the surviving spouse will receive a lump sum equal to two years of benefits. If there are no children, the spouse will receive 66 2/3 percent of the average monthly wage. If there are dependent children, the spouse will receive 35 percent of the average monthly wage.
- 2) Children: Benefits are payable to any natural, step or adopted child until age 18 (or age 22 if enrolled in an accredited educational institution and maintains a full-time status). Benefits terminate if the child marries. A disabled child will continue to receive benefits until death or until they become

financially self-supporting. If there is a surviving spouse, a single child will receive 31 2/3 percent of the average monthly wage. Multiple children will split the 31 2/3 percent or 66 2/3 percent if there is no spouse.

- 3) Parents: If there are no surviving spouse or children, a parent or stepparent who is wholly dependent on the employee for financial assistance will receive 25 percent of the employee's average monthly wage. If there are two surviving parents or stepparents, they will share 40 percent of the employee's average monthly wage equally. If one or both parents or stepparents were only partially dependent on the employee for financial support, the maximum benefit is 15 percent of the employee's average monthly wage.
- 4) Siblings under the age of 18: If one sibling was wholly dependent on the employee for support, they will receive 25 percent of the employee's average monthly wage until they reach age 18. If there are multiple siblings wholly dependent on the employee, they share 35 percent of the employee's average monthly wage equally until they reach age 18. If one or more siblings were only partially dependent on the employee for financial support, the maximum benefit is 15 percent of the employee's average monthly wage to be shared equally until turning 18.

INDUSTRIAL COMMISSION OF ARIZONA

The Industrial Commission of Arizona (ICA) is the state regulatory agency responsible for processing and adjudicating workers' compensation claims. The ICA Claims Division manages claims filed by employed or uninsured employers. The Claims Division maintains the official record for all workers' compensation claims and provides assistance to injured workers through its Ombudsman's Office. The ICA Administrative Law Judge Division adjudicates disputes arising under the Arizona Workers' Compensation Act. The ICA Special Fund Division serves as a safety net for claims

³⁰A.R.S. § 23-1046

involving an uninsured employer and provides vocational rehabilitation benefits, supportive care and apportionment benefits.

INDUSTRIAL COMMISSION OF ARIZONA CONTACT INFORMATION

Claims Division.....(602) 542-4661
Administrative Law Judge Division.....(602) 542-5241
Ombudsman's Office(602) 542-4538

The ICA does not provide legal advice. Workers seeking legal advice may wish to consult a lawyer licensed to practice law in Arizona. Resources for those seeking counsel include the Maricopa County Lawyer Referral Service, the Pima County Lawyer Referral Service and the Hotline for Certified Specialists. The State Bar of Arizona also maintains a list of certified workers' compensation specialists at www.azbar.org.

LEGAL REFERRAL SERVICES CONTACT INFORMATION

Maricopa County Lawyer Referral Service
.....(602) 257-4434
Pima County Lawyer Referral Service(520) 623-4625
Hotline for Certified Specialists(602) 340-7300
State Bar of Arizona(602) 252-4804

ADDITIONAL RESOURCES

- Arizona State Compensation Fund Statutes: Arizona Revised Statutes, Title 23, Chapter 6, Article 5
- Industrial Commission of Arizona - www.azica.gov
- Arizona Workers' Compensation Handbook, State Bar of Arizona