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REFERENCE TITLE: workers' compensation; employee definition; LLCs

State of Arizona  
House of Representatives  
Fifty-third Legislature  
Second Regular Session  
2018

# HB 2047

Introduced by  
Representative Livingston

AN ACT

AMENDING SECTION 23-901, 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  
14 employee's employer.

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

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

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

19 (a) Every person in the service of ~~the~~ THIS state or a county,  
20 city, town, municipal corporation or school district, including regular  
21 members of lawfully constituted police and fire departments of cities and  
22 towns, whether 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  
25 work 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  
28 of the employer.

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

37 (d) Regular members of volunteer fire departments organized  
38 pursuant to title 48, chapter 5, article 1, regular ~~firemen~~ FIREFIGHTERS  
39 of any volunteer fire department, including private fire protection  
40 service organizations, organized pursuant to title 10, chapters 24 through  
41 40, volunteer ~~firemen~~ FIREFIGHTERS serving as members of a fire department  
42 of any incorporated city or town or an unincorporated area without pay or  
43 without full pay and on a part-time basis, and voluntary policemen and  
44 volunteer ~~firemen~~ FIREFIGHTERS serving in any incorporated city, town or  
45 unincorporated area without pay or without full pay and on a part-time

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

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

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

35 (g) Regular members of a volunteer sheriff's reserve, which may be  
36 established by resolution of the county board of supervisors, to assist  
37 the sheriff in the performance of the sheriff's official duties. A roster  
38 of the current members shall monthly be certified to the clerk of the  
39 board of supervisors by the sheriff and shall not exceed the maximum  
40 number authorized by the board **OF SUPERVISORS**. Certified members of an  
41 authorized volunteer sheriff's reserve shall be deemed to be employees of  
42 the county for the purpose of coverage under the Arizona workers'  
43 compensation laws and occupational disease disability laws and shall be  
44 entitled to receive the benefits of these laws for any compensable  
45 injuries or disabling conditions that arise out of and occur in the course

1 of the performance of duties authorized and directed by the sheriff.  
2 Compensation benefits and premium payments shall be based on the salary  
3 received by a regular full-time deputy sheriff of the county involved for  
4 the first month of regular patrol duty as an officer for each certified  
5 member of a volunteer sheriff's reserve. This subdivision does not  
6 provide compensation coverage for any member of a sheriff's posse who is  
7 not a certified member of an authorized volunteer sheriff's reserve except  
8 as a participant in a search and rescue mission or a search and rescue  
9 training mission.

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

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

36 (j) A member of the Arizona national guard, Arizona state guard or  
37 unorganized militia shall be deemed a state employee and entitled to  
38 coverage under the Arizona workers' compensation law at all times while  
39 the member is receiving the payment of the member's military salary from  
40 this state under competent military orders or on order of the governor.  
41 Compensation benefits shall be based on the monthly military pay rate to  
42 which the member is entitled at the time of injury, but not less than a  
43 salary of four hundred dollars per month, nor more than the maximum  
44 provided by the workers' compensation law. Arizona compensation benefits  
45 shall not inure to a member compensable under federal law.

1       (k) Certified ambulance drivers and attendants who serve without  
2 pay or without full pay on a part-time basis are deemed to be employees  
3 and entitled to the benefits provided by this chapter and the basis for  
4 computing wages for premium payments and compensation benefits for  
5 certified ambulance personnel shall be four hundred dollars per month.

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

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

20      (n) Personnel who participate in emergency management training,  
21 exercises or drills that are duly enrolled or registered with the division  
22 of emergency management or any political subdivision as provided in  
23 section 26-314, subsection C and who serve without compensation as  
24 volunteer state employees. The basis for computation of wages for premium  
25 purposes and compensation benefits is the total volunteer man-hours  
26 recorded by the division of emergency management or political subdivision  
27 during a given training session, exercise or drill multiplied by the  
28 amount determined by the appropriate risk management formula.

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

35      (p) Every person employed pursuant to a professional employer  
36 agreement.

37      (q) A WORKING MEMBER OF A LIMITED LIABILITY COMPANY WHO OWNS LESS  
38 THAN FIFTY PERCENT OF THE MEMBERSHIP INTEREST IN THE LIMITED LIABILITY  
39 COMPANY.

40      (r) A WORKING MEMBER OF A LIMITED LIABILITY COMPANY WHO OWNS FIFTY  
41 PERCENT OR MORE OF THE MEMBERSHIP INTEREST IN THE LIMITED LIABILITY  
42 COMPANY MAY BE DEEMED TO BE AN EMPLOYEE ENTITLED TO THE BENEFITS PROVIDED  
43 BY THIS CHAPTER ON THE WRITTEN ACCEPTANCE, BY ENDORSEMENT, OF AN  
44 APPLICATION FOR COVERAGE BY THE WORKING MEMBER AT THE DISCRETION OF THE  
45 INSURANCE CARRIER FOR THE LIMITED LIABILITY COMPANY. THE BASIS FOR

1 COMPUTING WAGES FOR PREMIUM PAYMENTS AND COMPENSATION BENEFITS FOR THE  
2 WORKING MEMBER IS AN ASSUMED AVERAGE MONTHLY WAGE OF SIX HUNDRED DOLLARS  
3 OR MORE BUT NOT MORE THAN THE MAXIMUM WAGE PROVIDED IN SECTION 23-1041 AND  
4 IS SUBJECT TO THE DISCRETIONARY APPROVAL OF THE INSURANCE CARRIER. ANY  
5 COMPENSATION FOR PERMANENT PARTIAL OR PERMANENT TOTAL DISABILITY PAYABLE  
6 TO THE WORKING MEMBER IS COMPUTED ON THE LESSER OF THE ASSUMED MONTHLY  
7 WAGE AGREED TO BY THE INSURANCE CARRIER ON THE ACCEPTANCE OF THE  
8 APPLICATION FOR COVERAGE OR THE ACTUAL AVERAGE MONTHLY WAGE RECEIVED BY  
9 THE WORKING MEMBER AT THE TIME OF INJURY.

10 7. "General order" means an order applied generally throughout ~~the~~  
11 THIS state to all persons under jurisdiction of the commission.

12 8. "Heart-related or perivascular injury, illness or death" means  
13 myocardial infarction, coronary thrombosis or any other similar sudden,  
14 violent or acute process involving the heart or perivascular system, or  
15 any death resulting therefrom, and any weakness, disease or other  
16 condition of the heart or perivascular system, or any death resulting  
17 therefrom.

18 9. "Insurance carrier" means every insurance carrier duly  
19 authorized by the director of insurance to write workers' compensation or  
20 occupational disease compensation insurance in this state.

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

24 11. "Mental injury, illness or condition" means any mental,  
25 emotional, psychotic or neurotic injury, illness or condition.

26 12. "Order" means and includes any rule, direction, requirement,  
27 standard, determination or decision other than an award or a directive by  
28 the commission or an administrative law judge relative to any entitlement  
29 to compensation benefits, or to the amount ~~thereof~~ OF COMPENSATION  
30 BENEFITS, and any procedural ruling relative to the processing or  
31 adjudicating of a compensation matter.

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

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

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

39 (c) An occupational disease that is due to causes and conditions  
40 characteristic of and peculiar to a particular trade, occupation, process  
41 or employment, and not the ordinary diseases to which the general public  
42 is exposed, and subject to section 23-901.01 or, for heart-related,  
43 perivascular or pulmonary cases, section 23-1105.

44 14. "Professional employer agreement" means a written contract  
45 between a client and a professional employer organization:

1       (a) In which the professional employer organization expressly  
2 agrees to co-employ all or a majority of the employees providing services  
3 for the client. In determining whether the professional employer  
4 organization employs all or a majority of the employees of a client, any  
5 person employed pursuant to the terms of the professional employer  
6 agreement after the initial placement of client employees on the payroll  
7 of the professional employer organization shall be included.

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

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

12      15. "Professional employer organization" means any person engaged  
13 in the business of providing professional employer services. Professional  
14 employer organization does not include a temporary help firm or an  
15 employment agency.

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

20      17. "Special order" means an order other than a general order.

21      18. "Weakness, disease or other condition of the heart or  
22 perivascular system" means arteriosclerotic heart disease, cerebral  
23 vascular disease, peripheral vascular disease, cardiovascular disease,  
24 angina pectoris, congestive heart trouble, coronary insufficiency,  
25 ischemia and all other similar weaknesses, diseases and conditions, and  
26 also previous episodes or instances of myocardial infarction, coronary  
27 thrombosis or any similar sudden, violent or acute process involving the  
28 heart or perivascular system.

29      19. "Workers' compensation" means workmen's compensation as used in  
30 article XVIII, section 8, Constitution of Arizona.

31      Sec. 2. Short title

32      Section 23-901, Arizona Revised Statutes, as amended by this act,  
33 may be cited as the "Allow Limited Liability Companies to Opt In to  
34 Workers' Compensation (ALLOW) Act".