

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".