

REFERENCE TITLE: workers' compensation; claim settlement

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1100

Introduced by
Senator Fann

AN ACT

AMENDING SECTION 23-941.01, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-941.03; 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 23-941.01, Arizona Revised Statutes, is amended
3 to read:

4 23-941.01. Settlement of claims; full and final; definitions

5 A. The interested parties to a claim may:

6 1. Settle and release all or any part of ~~an accepted~~ A claim, ~~for~~
7 ~~compensation, benefits, penalties or interest~~ WHETHER DENIED OR ACCEPTED,
8 ON APPROVAL BY THE COMMISSION. THIS SECTION DOES NOT PROHIBIT A
9 SETTLEMENT THAT DOES NOT CONSTITUTE A FULL AND FINAL SETTLEMENT.

10 2. If the period of TEMPORARY disability is terminated by ~~the~~
11 ~~carrier, special fund or self-insured employer~~ A FINAL NOTICE OF CLAIM
12 STATUS OR AWARD OF THE COMMISSION, negotiate a full and final settlement
13 OF AN ACCEPTED CLAIM.

14 B. Any full and final settlement shall:

15 1. Be in writing.

16 2. Be signed by the carrier, special fund or self-insured employer
17 OR AN AUTHORIZED REPRESENTATIVE OF THE CARRIER, SPECIAL FUND OR
18 SELF-INSURED EMPLOYER and the employee or the employee's authorized
19 representative.

20 3. Acknowledge that the employee had the opportunity to seek legal
21 advice and be represented by counsel.

22 4. Include a description of the employee's medical conditions that
23 have been identified and contemplated at the time of the settlement
24 agreement.

25 5. HAVE ATTACHED THE INFORMATION PROVIDED BY THE CARRIER, SPECIAL
26 FUND OR SELF-INSURED EMPLOYER PURSUANT TO SUBSECTION C, PARAGRAPHS 2 AND 3
27 OF THIS SECTION.

28 C. ~~If the employee is represented by counsel, the~~ A full and final
29 settlement shall include the following SIGNED attestations:

30 1. The employee understands the rights settled and released by the
31 agreement ~~and was represented by counsel~~.

32 2. The employee has been provided information from the carrier,
33 special fund or self-insured employer that outlines any reasonable
34 anticipated future medical, surgical and hospital benefits relating to the
35 claim, ~~and~~ the projected cost of those benefits, ~~and that provides~~ an
36 explanation of how those projected costs were determined AND A DISCLOSURE
37 OF THE AMOUNT OF THE SETTLEMENT THAT REPRESENTS THE SETTLEMENT OF FUTURE
38 MEDICAL, SURGICAL AND HOSPITAL BENEFITS.

39 3. THE EMPLOYEE HAS BEEN PROVIDED INFORMATION FROM THE CARRIER,
40 SPECIAL FUND OR SELF-INSURED EMPLOYER THAT DISCLOSES THE TOTAL AMOUNT OF
41 FUTURE INDEMNITY BENEFITS, THE EMPLOYEE'S RATED AGE, IF APPLICABLE, THE
42 EMPLOYEE'S LIFE EXPECTANCY, THE SOURCE OF THE EMPLOYEE'S LIFE EXPECTANCY,
43 THE PRESENT VALUE OF FUTURE INDEMNITY BENEFITS, THE DISCOUNT RATE USED TO
44 CALCULATE PRESENT VALUE AND THE AMOUNT OF THE SETTLEMENT THAT REPRESENTS
45 THE SETTLEMENT OF FUTURE INDEMNITY BENEFITS.

1 ~~3.~~ 4. The employee understands that monies received for future
2 medical treatment associated with the industrial injury should be set
3 aside to ensure that the costs of ~~such~~ THE treatment will be paid.

4 ~~4.~~ 5. The parties have considered and taken reasonable steps to
5 protect any interests of medicare, medicaid, the Indian health service and
6 the United States department of veterans affairs, including establishing a
7 medicare savings account if necessary.

8 ~~5.~~ 6. The parties have conducted a search for and taken reasonable
9 steps to satisfy any identified medical liens AND UNPAID MEDICAL CHARGES.

10 7. COERCION, DURESS, FRAUD, MISREPRESENTATION OR UNDISCLOSED
11 ADDITIONAL AGREEMENTS HAVE NOT BEEN USED TO ACHIEVE THE FULL AND FINAL
12 SETTLEMENT.

13 D. If the employee is not represented by counsel, the employee
14 shall appear before an administrative law judge OF THE COMMISSION and the
15 administrative law judge shall make specific factual findings regarding
16 whether the requirements of ~~subsection~~ SUBSECTIONS B and C ~~subsection C,~~
17 ~~paragraphs 2, 3, 4 and 5~~ of this section are satisfied. ~~The~~
18 ~~administrative law judge may not approve the settlement if the~~
19 ~~requirements of subsection B of this section are not met or if the~~
20 ~~settlement is not deemed fair and reasonable to the employee.~~

21 ~~E. A full and final settlement is not valid and enforceable unless~~
22 ~~the full and final settlement is approved by the commission. When~~
23 ~~determining whether to approve a settlement, the commission shall consider~~
24 ~~whether the settlement is in the best interests of the employee based on~~
25 ~~the following criteria:~~

26 ~~1. Whether the employee's injuries are stabilized.~~

27 ~~2. The permanency of the employee's injuries.~~

28 E. THE COMMISSION MAY NOT APPROVE A FULL AND FINAL SETTLEMENT IF
29 THE REQUIREMENTS OF SUBSECTIONS B AND C OF THIS SECTION ARE NOT MET OR IF
30 THE SETTLEMENT IS NOT DEEMED FAIR AND REASONABLE TO THE EMPLOYEE. IN
31 DETERMINING WHETHER A FULL AND FINAL SETTLEMENT IS FAIR AND REASONABLE TO
32 THE EMPLOYEE, THE COMMISSION SHALL CONSIDER INFORMATION PERTAINING TO THE
33 COMPUTATION OF THE SETTLEMENT AMOUNT, AS OUTLINED IN SUBSECTION C,
34 PARAGRAPHS 2 AND 3 OF THIS SECTION.

35 F. A ~~lump sum~~ FULL AND FINAL settlement payment shall be made to
36 the employee within fifteen days after the award approving the settlement
37 becomes final.

38 G. The carrier, special fund or self-insured employer shall notify
39 the attending physician of the approval of a full and final settlement if
40 the full and final settlement terminates the employee's entitlement to
41 medical benefits. Unless medical benefits rendered before the approval
42 date of the full and final settlement are subject to a dispute or payment
43 for the treatment was included in the full and final settlement agreement,
44 the carrier, special fund or self-insured employer remains responsible for

1 payment for the treatment not covered by the full and final settlement
2 agreement as provided by this chapter.

3 H. Notwithstanding subsection A of this section, a full and final
4 settlement may not be negotiated to settle issues resulting in total and
5 permanent disability pursuant to section 23-1045, subsections C and D.

6 I. A full and final settlement agreement may not include the
7 settlement of claims unrelated to the claim for compensation, benefits,
8 penalties and interest.

9 ~~J. This section does not apply to the settlement of claims that
10 have been denied.~~

11 ~~K.~~ J. For the purposes of this section:

12 1. "Full and final settlement" means a settlement in which the
13 injured employee or, if the injured employee is deceased, the employee's
14 estate, surviving spouse or dependent waives any future entitlement to
15 benefits on the claim and any future right to change the claim pursuant to
16 section 23-1044, subsection F or reopen the claim pursuant to section
17 23-1061, subsection H.

18 2. "Special fund" means the special fund established by section
19 23-1065.

20 Sec. 2. Title 23, chapter 6, article 3, Arizona Revised Statutes,
21 is amended by adding section 23-941.03, to read:

22 23-941.03. Settlement of claims; supportive medical
23 maintenance benefits; definition

24 A. ANY FINAL SETTLEMENT AGREEMENT INVOLVING UNDISPUTED ENTITLEMENT
25 TO SUPPORTIVE MEDICAL MAINTENANCE BENEFITS IS NOT VALID AND ENFORCEABLE
26 UNTIL THE FINAL SETTLEMENT AGREEMENT IS APPROVED BY THE COMMISSION.

27 B. THE COMMISSION MAY APPROVE A FINAL SETTLEMENT AGREEMENT
28 INVOLVING UNDISPUTED ENTITLEMENT TO SUPPORTIVE MEDICAL MAINTENANCE
29 BENEFITS IF THE REQUIREMENTS OF THIS SECTION ARE SATISFIED.

30 C. SUBJECT TO THE FOLLOWING REQUIREMENTS, THE INTERESTED PARTIES TO
31 A CLAIM MAY ENTER INTO A FINAL SETTLEMENT AND RELEASE OF A CLAIM FOR
32 UNDISPUTED ENTITLEMENT TO SUPPORTIVE MEDICAL MAINTENANCE BENEFITS AFTER
33 THE PERIOD OF TEMPORARY DISABILITY IS TERMINATED BY A FINAL NOTICE OF
34 CLAIM STATUS OR AWARD OF THE COMMISSION. THE CARRIER, SPECIAL FUND OR
35 SELF-INSURED EMPLOYER SHALL SUBMIT A SUMMARY OF ALL REASONABLY ANTICIPATED
36 FUTURE SUPPORTIVE MEDICAL MAINTENANCE BENEFITS AND THE PROJECTED COST OF
37 THE BENEFITS FOR REVIEW BY THE EMPLOYEE. THE SUMMARY SHALL ALSO BE
38 INCLUDED WITH THE FINAL SETTLEMENT AGREEMENT FILED WITH THE
39 COMMISSION. ALL MEDICAL CONDITIONS SUBJECT TO THE FINAL SETTLEMENT
40 AGREEMENT MUST BE DESCRIBED IN THE FINAL SETTLEMENT AGREEMENT. THE FINAL
41 SETTLEMENT PROVISIONS DEFINED IN THIS SUBSECTION SHALL APPLY ONLY TO
42 FUTURE SUPPORTIVE MEDICAL MAINTENANCE BENEFITS FOR THE DESCRIBED
43 CONDITION.

44 D. THE CARRIER, SPECIAL FUND OR SELF-INSURED EMPLOYER SHALL INFORM
45 THE ATTENDING PHYSICIAN OF THE APPROVAL OF A FINAL SETTLEMENT AGREEMENT.

1 UNLESS SUPPORTIVE MEDICAL MAINTENANCE BENEFITS RENDERED BEFORE THE DATE OF
2 THE FINAL SETTLEMENT ARE SUBJECT TO A DISPUTE OR PAYMENT FOR THE TREATMENT
3 WAS INCLUDED IN THE FINAL SETTLEMENT AGREEMENT, THE CARRIER, SPECIAL FUND
4 OR SELF-INSURED EMPLOYER SHALL REMAIN RESPONSIBLE FOR PAYMENT FOR THE
5 TREATMENT NOT COVERED BY THE FINAL SETTLEMENT AGREEMENT AS PROVIDED BY
6 THIS CHAPTER.

7 E. THIS SECTION DOES NOT PROHIBIT A SETTLEMENT THAT DOES NOT
8 CONSTITUTE A FINAL SETTLEMENT.

9 F. FOR THE PURPOSES OF THIS SECTION, "FINAL SETTLEMENT" MEANS A
10 SETTLEMENT IN WHICH THE INJURED WORKER WAIVES ANY FUTURE ENTITLEMENT TO
11 SUPPORTIVE MEDICAL MAINTENANCE BENEFITS FOR KNOWN CONDITIONS DESCRIBED IN
12 THE AGREEMENT.