

REFERENCE TITLE: **employment security; employee; employer; status**

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

SB 1500

Introduced by
Senator Smith

AN ACT

AMENDING SECTIONS 23-613.01 AND 23-614, ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-613.01, Arizona Revised Statutes, is amended
3 to read:

4 23-613.01. Employee; definition; exempt employment

5 A. "Employee" means any individual who performs services for an
6 employing unit and who is subject to the direction, rule or control of the
7 employing unit as to both the method of performing or executing the
8 services and the result to be effected or accomplished. Indications of
9 control by the employing unit include controlling the individual's hours
10 of work, location of work, right to perform services for others, tools,
11 equipment, materials, expenses and use of other workers and other indicia
12 of employment, except employee does not include:

13 1. An individual who performs services as an independent
14 contractor, business person, agent or consultant, or in a capacity
15 characteristic of an independent profession, trade, skill or occupation.

16 2. An individual subject to the direction, rule or control or
17 subject to the right of direction, rule or control of an employing unit
18 solely because of a ~~provision of~~ law regulating the organization, trade or
19 business of the employing unit.

20 3. An individual or class of individuals that the federal
21 government has decided not to and does not treat as an employee or
22 employees for federal unemployment tax purposes, AS ESTABLISHED BY THE
23 OUTCOME OF AN AUDIT OR OTHER AFFIRMATIVE TREATMENT BY THE INTERNAL REVENUE
24 SERVICE OF ANY TAXPAYER WHOSE TAX RETURNS INCLUDE INCOME FROM THE
25 INDEPENDENT CONTRACTOR RELATIONSHIP.

26 4. An individual if the employing unit demonstrates the individual
27 performs services in the same manner as a similarly situated class of
28 individuals that the federal government has decided not to and does not
29 treat as an employee or employees for federal unemployment tax purposes.

30 5. An individual to whom all of the following apply:

31 (a) Performs officiating services in recreational, interscholastic
32 or intercollegiate sporting events or contests on a contest-by-contest
33 basis.

34 (b) Has the ability to accept or reject assignments to officiate a
35 sporting event or contest.

36 (c) Has the right to officiate contests for multiple organizations
37 or entities.

38 (d) Is not otherwise employed by the sponsoring school, association
39 of schools or the organization, this state, or a political subdivision of
40 this state sponsoring the sporting event or contest.

41 6. A MEDICAL OR HEALTH CARE PROFESSIONAL WHO CONTRACTS WITH A
42 MEDICAL PRACTICE GROUP OR HOSPITAL, WHETHER DIRECTLY OR THROUGH AN AGENT,
43 AND WHO IS CHARACTERIZED BY ALL OF THE FOLLOWING:

44 (a) OBSERVES THE PRACTICES COMMONLY ASSOCIATED WITH OPERATING AS A
45 MEDICAL OR PROFESSIONAL ENTITY, SUCH AS A PROFESSIONAL CORPORATION, A

1 LIMITED LIABILITY COMPANY OR A CONTRACTOR, AND USES THE PRACTICES OF THOSE
2 ENTITIES FOR COMPENSATION, BILLING FOR SERVICES AND FILING TAX RETURNS.

3 (b) IS NOT PAID WAGES AND DOES NOT HAVE WAGE WITHHOLDINGS FROM THE
4 CONTRACTED MEDICAL PRACTICE GROUP OR HOSPITAL.

5 (c) IS NOT PROVIDED EMPLOYEE BENEFITS BY THE CONTRACTED MEDICAL
6 PRACTICE GROUP OR HOSPITAL.

7 B. For the purposes of subsection A, paragraph 5 of this section,
8 "officiating services" means overseeing the play of a sporting event or
9 contest, judging whether the rules are being followed and penalizing
10 participants for infringing the rules.

11 C. Notwithstanding this section, an individual or class of
12 individuals shall not be treated as an employee by the department for
13 purposes of this chapter if, before the department's determination that
14 the individual or class of individuals at issue is an employee:

15 1. The individual or class of individuals had been performing
16 services for the employing unit.

17 2. The department had inspected work records of the employing unit
18 for time periods that the individual or class of individuals had been
19 performing these services.

20 3. The individual or class of individuals at issue was not included
21 on the contribution and wage reports of the employing unit.

22 4. After its inspection the department concluded in writing
23 provided to the employing unit that either:

24 (a) No change or changes in the inspected reports were necessary.

25 (b) The individual or class of individuals in question did not
26 constitute an employee for purposes of this chapter.

27 5. At no time between the date of the written determination
28 prescribed in paragraph 4 of this subsection, and the department's
29 subsequent conclusion that the individual or class of individuals at issue
30 constitutes an employee, did the department notify the employing unit in
31 writing that the individual or class of individuals at issue now
32 constitutes an employee for purposes of this chapter.

33 D. Subsection C of this section does not apply if either:

34 1. There has been a substantial and material change in the facts
35 ~~upon~~ ON which the writing required by subsection C, paragraph 4 of this
36 section was based.

37 2. The conclusion reached by the department pursuant to subsection
38 C, paragraph 4 of this section was the result of false statements,
39 misrepresentation, fraud or intimidation on the part of the employing
40 unit.

41 E. The following services are exempt employment under this chapter,
42 unless there is evidence of direction, rule or control sufficient to
43 satisfy the definition of an employee under subsection A of this section,
44 which is distinct from any evidence of direction, rule or control related

1 to or associated with establishing the nature or circumstances of the
2 services considered pursuant to this subsection:

3 1. Services ~~which~~ THAT are not a part or process of the
4 organization, trade or business of an employing unit and ~~which~~ THAT are
5 performed by an individual who is not treated by the employing unit in a
6 manner generally characteristic of the treatment of employees.

7 2. Services performed by an individual for an employing unit OR ITS
8 CLIENTS through isolated or occasional transactions, regardless of whether
9 ~~such~~ THE services are a part or process of the organization, trade or
10 business of the employing unit.

11 F. Notwithstanding this section, an individual or class of
12 individuals determined to be an employee or employees for purposes of the
13 federal unemployment tax act, as amended (26 United States Code sections
14 3301 through 3311), are employees under this chapter.

15 G. Notwithstanding any other provision of this chapter, this
16 section applies to an employing unit to which the provisions of section
17 23-750 apply only to the extent not inconsistent with the requirements of
18 26 United States Code sections 3304 (a)(6) and 3309.

19 H. FOR THE PURPOSES OF DETERMINING EMPLOYEE STATUS, THE DEPARTMENT
20 SHALL CONSIDER ALL OF THE EMPLOYMENT-RELATED FACTS AND MAY NOT BASE A
21 DETERMINATION ON THE FACTS THAT:

22 1. THE INDIVIDUAL PERFORMS SERVICES AS A SOLE PROPRIETORSHIP.

23 2. THE INDIVIDUAL HAS EXECUTED A RESTRICTIVE COVENANT, TRADE SECRET
24 AGREEMENT OR OTHER CONFIDENTIALITY AGREEMENT WITH THE EMPLOYING UNIT.

25 3. THE SERVICES OF THE INDIVIDUAL ARE SUBJECT TO STANDARDS FOR
26 QUALITY, TIME OR LOCATION REQUIRED BY A CLIENT OR CUSTOMER OF THE PUTATIVE
27 EMPLOYING UNIT.

28 Sec. 2. Section 23-614, Arizona Revised Statutes, is amended to
29 read:

30 23-614. Employing unit; temporary services employer;
31 professional employer organization; definitions

32 A. "Employing unit" means an individual or type of organization,
33 including a partnership, association, trust, estate, joint-stock company,
34 insurance company or corporation, whether domestic or foreign, or the
35 receiver, trustee in bankruptcy, trustee or successor of any of the
36 foregoing, or the legal representative of a deceased person, which has, or
37 ~~subsequent to~~ AFTER January 1, 1936 had, one or more individuals
38 performing services for it within this state. ~~Effective January 1,~~
39 ~~1962, "Employing unit"~~ includes any federal instrumentality that is
40 ~~neither~~ NOT wholly ~~nor~~ OR partially owned by the United States and that
41 has one or more individuals performing services for it within this state.

42 B. Each individual who performs services ~~within~~ IN this state for
43 an employing unit that maintains two or more separate establishments
44 ~~within~~ IN this state is performing services for a single employing unit
45 for all the purposes of this chapter.

1 C. Each individual employed to perform or to assist in performing
2 the work of any person in the service of an employing unit is engaged by
3 the employing unit for all the purposes of this chapter, whether the
4 individual was hired or paid directly by the employing unit or by ~~such~~ THE
5 person, ~~provided~~ IF the employing unit had actual or constructive
6 knowledge of the work. Notwithstanding any other provision of this
7 chapter except for section 23-612.01, an individual who performs services
8 in or for a particular employing unit is not in the employment of ~~such~~
9 THAT employing unit if ~~such~~ THE individual's wages for services in or for
10 the particular employing unit are paid by another employing unit, and if
11 the contributions required by this chapter on ~~such~~ THE wages are paid by
12 ~~such~~ THE other employing unit.

13 D. Notwithstanding any other provision of this chapter, whether an
14 individual or entity is the employer of specific employees shall be
15 determined by section 23-613.01, except as provided in subsections E and G
16 of this section with respect to a professional employer organization or a
17 temporary services employer. The exceptions to the definition of employee
18 prescribed in section 23-613.01, subsection A apply to determinations made
19 pursuant to subsections E, F, G and H of this section.

20 E. A professional employer organization or a temporary services
21 employer that contracts to supply a worker to perform services for a
22 customer or client is the employer of the worker who performs the
23 services. A customer or client who contracts with an individual or entity
24 that is not a professional employer organization or a temporary services
25 employer to engage a worker to perform services is the employer of the
26 worker who performs the services. Except as provided in subsection F of
27 this section, an individual or entity that is not a professional employer
28 organization or a temporary services employer, that contracts to supply a
29 worker to perform services to a customer or client and that pays
30 remuneration to the worker acts as the agent of the employer for purposes
31 of payment of remuneration.

32 F. In circumstances that are in essence a loan of an employee to
33 another employer and the direction and control of the manner and means of
34 performing the services changes to the employer to whom the employee is
35 loaned, the loaning employer continues to be the employer of the employee
36 if the loaning employer continues to pay remuneration to the employee,
37 whether or not THE LOANING EMPLOYER IS reimbursed by the other employer.
38 If the employer to whom the employee is loaned pays remuneration to the
39 employee for the services performed, that employer is considered the
40 employer for the purposes of any remuneration paid to the employee by the
41 employer, regardless of whether the loaning employer also pays
42 remuneration to the employee.

43 G. A professional employer organization shall report and pay all
44 required contributions to the unemployment compensation fund using the

1 state employer account number and the contribution rate of the
2 professional employer organization.

3 H. On termination of a contract between a professional employer
4 organization and a client or the failure by a professional employer
5 organization to submit reports or make tax payments as required by this
6 chapter, the client shall be treated as a new employer without a previous
7 experience record if the client has been subject to a professional
8 employer agreement for at least two years or if the client is not
9 otherwise eligible for an experience rating.

10 I. For the purposes of this section:

11 1. "Professional employer organization" has the same meaning
12 prescribed in section 23-561.

13 2. "Temporary services employer" means an employing unit that
14 contracts with clients or customers to supply workers to perform services
15 **IN MORE THAN ONE INDUSTRY** for the client or customer and that performs all
16 of the following:

17 (a) Negotiates with clients or customers for such matters as the
18 time of work, the place of work, the type of work, the working conditions,
19 the quality of services and the price of services.

20 (b) Determines assignments or reassignments of workers, even though
21 workers retain the right to refuse specific assignments.

22 (c) Retains the authority to assign or reassign a worker to other
23 clients or customers if a worker is determined unacceptable by a specific
24 client or customer.

25 (d) Assigns or reassigns the worker to perform services for a
26 client or customer.

27 (e) Sets the rate of pay of the worker, whether or not through
28 negotiation.

29 (f) Pays the worker from its own account or accounts.

30 (g) Retains the right to hire and terminate workers.