

~~wage rates; technical correction~~
~~(now: labor organizations; fiduciary guidelines; definitions)~~
(now: labor benefits organizations; damages; definitions)

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 255
SENATE BILL 1278

AN ACT

REPEALING SECTION 23-1421, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 8, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 23-1421; RELATING TO LABOR ORGANIZATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section 23-1421, Arizona Revised Statutes, is repealed.

4 Sec. 2. Title 23, chapter 8, article 7, Arizona Revised Statutes,
5 is amended by adding a new section 23-1421, to read:

6 23-1421. Third-party benefits organizations; damages;
7 exemptions; exclusive remedy; statute of
8 limitations; applicability; definitions

9 A. AN EMPLOYEE WHO HAS SUFFERED CALCULATED DAMAGES MAY RECOVER
10 THREE TIMES THE CALCULATED DAMAGES FROM A THIRD-PARTY BENEFITS
11 ORGANIZATION FOR THE COST OF BENEFITS PAID BY THE EMPLOYEE. AN EMPLOYER
12 THAT HAS SUFFERED CALCULATED DAMAGES MAY RECOVER THREE TIMES THE
13 CALCULATED DAMAGES FROM A THIRD-PARTY BENEFITS ORGANIZATION THAT PAID FOR
14 THE COST OF EMPLOYEE BENEFITS. THE CALCULATED DAMAGES ARE AS FOLLOWS:

15 1. FOR HEALTH, PENSION OR VACATION OR SICK LEAVE BENEFITS, ANY
16 MONIES PAID BY OR FOR THE EMPLOYEE DURING A TWELVE-MONTH PERIOD THAT IS
17 MORE THAN ONE HUNDRED TWENTY PERCENT OF THE COST OF EQUIVALENT HEALTH,
18 PENSION OR VACATION OR SICK LEAVE BENEFITS. TO SHOW EQUIVALENCY, THE
19 PLAINTIFF MAY SUBMIT A MATHEMATICAL OR AN ACTUARIAL DATA ANALYSIS THAT
20 DEMONSTRATES THAT THE EMPLOYEE WOULD HAVE RECEIVED AT LEAST NINETY-FIVE
21 PERCENT OF THE SAME VALUE FROM A PRODUCT AVAILABLE THROUGH THE EMPLOYER OR
22 ON THE GENERAL MARKET.

23 2. FOR TRAINING BENEFITS, ANY MONIES PAID BY THE EMPLOYER OR
24 EMPLOYEE IN EXCESS OF ONE HUNDRED TWENTY PERCENT OF ANY REASONABLE
25 TRAINING COSTS INCURRED DURING A TWELVE-MONTH PERIOD FOR THE SPECIFIC
26 BENEFIT OF THE EMPLOYEE'S JOB SKILL.

27 3. FOR ANY OTHER BENEFIT, ANY MONIES PAID BY THE EMPLOYER OR
28 EMPLOYEE IN EXCESS OF \$1,000 DURING A TWELVE-MONTH PERIOD WHERE NO DIRECT
29 BENEFIT CAN BE ATTRIBUTED TO THE EMPLOYEE.

30 B. AN EMPLOYEE MAY RECOVER CALCULATED DAMAGES ATTRIBUTABLE TO
31 MONIES PAID BY THE EMPLOYEE'S EMPLOYER FOR THAT EMPLOYEE IF:

32 1. THE EMPLOYEE SENDS A CERTIFIED LETTER TO THE EMPLOYER'S
33 STATUTORY AGENT IN THIS STATE THAT ADVISES THE EMPLOYER THAT THE EMPLOYEE
34 INTENDS TO PURSUE SUCH A CLAIM UNLESS THE EMPLOYER OBJECTS WITHIN NINETY
35 DAYS.

36 2. THE EMPLOYER DOES NOT OBJECT. AN EMPLOYER'S FAILURE TO OBJECT
37 IN WRITING WITHIN NINETY DAYS CONSTITUTES A WAIVER OF THE EMPLOYER'S RIGHT
38 TO RECOVER PURSUANT TO THIS SECTION TO THE EXTENT OF THE EMPLOYEE'S
39 RECOVERY.

40 C. A THIRD-PARTY BENEFITS ORGANIZATION IS NOT LIABLE PURSUANT TO
41 THIS SECTION IF THE THIRD-PARTY BENEFITS ORGANIZATION SATISFIES ALL OF THE
42 FOLLOWING:

43 1. PROVIDES A RECONCILIATION TO ITS MEMBER EMPLOYEES THROUGH UNITED
44 STATES MAIL OR EMAIL THAT WOULD REASONABLY ALLOW AN EMPLOYEE TO DETERMINE

1 THE COSTS AND EXPENSES OF THE BENEFITS. THE RECONCILIATION MUST BE LISTED
2 BY BENEFIT FOR A TWELVE-MONTH PERIOD AND PROVIDE THE FOLLOWING:

3 (a) THE SPECIFIC RATES CHARGED TO THE EMPLOYEE AND EMPLOYER.

4 (b) THE DIRECT EXPENSE RATES CHARGED TO THE PLAN BY THIRD-PARTY
5 INSURERS AND PLAN PROVIDERS.

6 (c) THE TOTAL NUMBER OF EMPLOYEES, INCLUDING HOURS AND REVENUE
7 COLLECTED IN THIS STATE AND NATIONALLY.

8 (d) THE TOTAL DIRECT CLAIMS EXPENSES OR PAYMENTS TO BENEFICIARIES,
9 IF ANY, IN THIS STATE AND NATIONALLY.

10 (e) A LIST OF TOTAL PAYMENTS MADE TO ANY THIRD-PARTY INSURERS OR
11 PLAN PROVIDERS IN THIS STATE AND NATIONALLY.

12 (f) A LIST OF ALL ADMINISTRATIVE AND OTHER EXPENSES NOT LISTED IN
13 SUBDIVISIONS (a) THROUGH (e) OF THIS PARAGRAPH INCURRED IN THIS STATE AND
14 NATIONALLY.

15 (g) A LIST THAT SUMMARIZES THE DIFFERENCE BETWEEN THE REVENUES AND
16 EXPENSES IN SUBDIVISIONS (a) THROUGH (f) OF THIS PARAGRAPH IN THIS STATE
17 AND NATIONALLY LISTED IN TOTAL DOLLARS AND AS A PERCENTAGE OF REVENUE.

18 2. ALLOWS AN EMPLOYEE TO OPT OUT OF ANY HEALTH, PENSION OR VACATION
19 OR SICK LEAVE BENEFITS AND TO CHOOSE EITHER:

20 (a) BENEFITS FROM THE EMPLOYEE'S EMPLOYER IF THE EMPLOYER AGREES
21 AND THE EMPLOYER WITHHOLDS PAYMENT TO THE THIRD-PARTY BENEFITS
22 ORGANIZATION FOR THAT PARTICULAR BENEFIT CATEGORY.

23 (b) BENEFITS OUTSIDE THE EMPLOYMENT RELATIONSHIP IF THE EMPLOYER
24 WITHHOLDS PAYMENT FROM THE THIRD-PARTY BENEFITS ORGANIZATION FOR THAT
25 PARTICULAR BENEFIT CATEGORY AND FORWARDS THE MONIES TO THE EMPLOYEE.

26 3. ELIMINATES ANY PENALTY FOR AN EMPLOYEE OR EMPLOYER TO TERMINATE
27 THE RELATIONSHIP WITH THE THIRD-PARTY BENEFITS ORGANIZATION, INCLUDING
28 LIABILITY FOR ANY BENEFITS THAT ARE ACTUARILY UNDERFUNDED.

29 D. A CLAIM FOR CALCULATED DAMAGES MAY BE BROUGHT AGAINST A
30 THIRD-PARTY BENEFITS ORGANIZATION IN SUPERIOR COURT OR ANY OTHER
31 APPROPRIATE VENUE. EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION, THE
32 COURT SHALL AWARD A PLAINTIFF ANY CALCULATED DAMAGES THAT THE PLAINTIFF
33 HAS SUFFERED ALONG WITH ANY OTHER RELIEF TO WHICH THE PLAINTIFF MAY BE
34 ENTITLED. THIS SECTION PROVIDES THE EXCLUSIVE REMEDY FOR A VIOLATION OF
35 THIS SECTION. THIS SECTION DOES NOT CREATE A CAUSE OF ACTION BETWEEN AN
36 EMPLOYEE AND EMPLOYER.

37 E. THIS SECTION APPLIES TO ANY THIRD-PARTY BENEFITS ORGANIZATION
38 THAT ESTABLISHES OR NEGOTIATES THE RATES OR COLLECTS MONIES FOR EMPLOYEE
39 BENEFITS ON BEHALF OF A RESIDENT OF THIS STATE OR AN EMPLOYER THAT HAS
40 EMPLOYEES LOCATED IN THIS STATE.

41 F. ACTIONS FOR CALCULATED DAMAGES MUST BE BROUGHT WITHIN FOUR YEARS
42 AFTER THE CAUSE OF ACTION ACCRUES.

- 1 G. THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:
2 1. AN INSURER, INSURANCE AGENT OR INVESTMENT MANAGEMENT FIRM.
3 2. A THIRD-PARTY ADMINISTRATOR PERFORMING A PURELY ADMINISTRATIVE
4 ROLE.
5 3. AN EMPLOYEE WHO IS EMPLOYED BY THE FEDERAL GOVERNMENT OR A
6 POLITICAL SUBDIVISION OF THIS STATE.
7 H. FOR THE PURPOSES OF THIS SECTION:
8 1. "BENEFITS":
9 (a) MEANS MONIES PAID BY AN EMPLOYEE OR EMPLOYER TO A THIRD-PARTY
10 BENEFITS ORGANIZATION FOR THE BENEFIT OF THE EMPLOYEE AND INCLUDES HEALTH,
11 PENSION, TRAINING OR VACATION OR SICK LEAVE BENEFITS OR OTHER BENEFITS.
12 (b) DOES NOT INCLUDE LABOR ORGANIZATION MEMBERSHIP DUES.
13 2. "THIRD-PARTY BENEFITS ORGANIZATION" INCLUDES ANY LABOR
14 ORGANIZATION AS DEFINED IN SECTIONS 23-1301 AND 23-1321 AND ANY TAFT
15 HARTLEY TRUST, OTHER FUND OR ENTITY USED TO ADMINISTER ANY BENEFIT
16 REQUIRED BY A LABOR AGREEMENT ADOPTED BY A THIRD-PARTY BENEFITS
17 ORGANIZATION.

18 Sec. 3. Severability

19 If a provision of this act or its application to any person or
20 circumstance is held invalid, the invalidity does not affect other
21 provisions or applications of the act that can be given effect without the
22 invalid provision or application, and to this end the provisions of this
23 act are severable.

APPROVED BY THE GOVERNOR MAY 27, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 27, 2022.