

Conference Engrossed

~~injury reports, medical treatment~~
(now: workers' compensation; injuries; medical-only loss)

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 368
HOUSE BILL 2120

AN ACT

AMENDING SECTIONS 23-414, 23-418, 23-908 AND 23-963.01, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION AND THE DIVISION OF OCCUPATIONAL SAFETY AND HEALTH.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-414, Arizona Revised Statutes, is amended to
3 read:

4 23-414. Emergency temporary standards

5 A. The commission may provide for emergency temporary standards or
6 regulations to take immediate effect upon filing with the secretary of
7 state, if ~~it~~ THE COMMISSION OR THE UNITED STATES OCCUPATIONAL SAFETY AND
8 HEALTH ADMINISTRATION determines that employees are exposed to grave
9 danger from exposure to substances or agents determined to be toxic or
10 physically harmful or from new hazards and that such emergency standard or
11 regulation is necessary to protect employees from such danger.

12 B. Such emergency temporary standards or regulations shall be
13 effective until superseded by standards or regulations promulgated in
14 accordance with the procedures prescribed in section 23-410.

15 C. Upon filing such a standard or regulation with the secretary of
16 state the commission shall commence a proceeding in accordance with
17 section 23-410 and the emergency temporary standard or regulation shall
18 serve as a proposed standard or regulation for the proceeding. The
19 commission shall promulgate a standard or regulation under this subsection
20 no later than six months after filing of the emergency temporary standard
21 or regulation.

22 Sec. 2. Section 23-418, Arizona Revised Statutes, is amended to
23 read:

24 23-418. Penalties; violation; classification

25 A. Any employer who wilfully or repeatedly violates the
26 requirements of section 23-403 or any standard or regulation adopted
27 pursuant to section 23-410 or 23-414 or ~~any provision of~~ this article may
28 be assessed a civil penalty ~~of not more than seventy thousand dollars for~~
29 ~~each violation, but not less than five thousand dollars~~ for each wilful
30 violation OF NOT MORE THAN THE MAXIMUM CIVIL PENALTY, BUT NOT LESS THAN
31 THE MINIMUM CIVIL PENALTY, FOR WILFUL OR REPEATED VIOLATIONS ADOPTED BY
32 THE UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION PURSUANT
33 TO THE FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT IMPROVEMENTS ACT
34 OF 2015 (P.L. 114-74; 129 STAT. 599).

35 B. Any employer who has received a citation for a serious violation
36 of ~~any provision of~~ this article shall be assessed a civil penalty ~~of up~~
37 ~~to seven thousand dollars~~ for each such violation OF NOT MORE THAN THE
38 MAXIMUM CIVIL PENALTY FOR SERIOUS VIOLATIONS ADOPTED BY THE UNITED STATES
39 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION PURSUANT TO THE FEDERAL
40 CIVIL PENALTIES INFLATION ADJUSTMENT ACT IMPROVEMENTS ACT OF 2015
41 (P.L. 114-74; 129 STAT. 599).

42 C. Any employer ~~who~~ THAT has received a citation for a ~~non-serious~~
43 NONSERIOUS violation of ~~any provision of~~ this article may be assessed a
44 civil penalty ~~of up to seven thousand dollars~~ for each such violation OF
45 NOT MORE THAN THE MAXIMUM CIVIL PENALTY FOR NONSERIOUS VIOLATIONS ADOPTED

1 BY THE UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
2 PURSUANT TO THE FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT
3 IMPROVEMENTS ACT OF 2015 (P.L. 114-74; 129 STAT. 599).

4 D. Any employer ~~who~~ THAT fails to correct a violation for which a
5 citation has been issued within the abatement period ~~permitted~~ ALLOWED for
6 its correction, which ~~period~~ shall be suspended in case of a review
7 proceeding before an administrative law judge or the review board
8 initiated by the employer in good faith and not solely for delay or
9 avoidance of penalties, may be assessed a civil penalty of not more than
10 ~~seven thousand dollars~~ THE MAXIMUM CIVIL PENALTY FOR ABATEMENT VIOLATIONS
11 ADOPTED BY THE UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
12 PURSUANT TO THE FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT
13 IMPROVEMENTS ACT OF 2015 (P.L. 114-74; 129 STAT. 599) for each day during
14 which such failure or violation continues after the abatement date.

15 E. Any employer ~~who~~ THAT knowingly violates the requirements of
16 section 23-403 or any standard or regulation adopted pursuant to section
17 23-410 or 23-414 or ~~any provision of~~ this article and that violation
18 causes death to an employee is guilty of a class 6 felony, except that if
19 the conviction is for a second or subsequent violation the employer is
20 guilty of a class 5 felony.

21 F. Any person who knowingly gives advance notice of any inspection
22 to be conducted under this article without authority from the director is
23 guilty of a class 2 misdemeanor.

24 G. ~~Whoever~~ A PERSON WHO knowingly makes any false statement,
25 representation or certification in any application, record, report, plan
26 or other document filed or required to be maintained pursuant to this
27 article is guilty of a class 2 misdemeanor.

28 H. Any employer ~~who~~ THAT violates any of the posting requirements
29 of this article shall be assessed a civil penalty ~~of up to seven thousand~~
30 ~~dollars~~ for each violation OF NOT MORE THAN THE MAXIMUM CIVIL PENALTY FOR
31 POSTING VIOLATIONS ADOPTED BY THE UNITED STATES OCCUPATIONAL SAFETY AND
32 HEALTH ADMINISTRATION PURSUANT TO THE FEDERAL CIVIL PENALTIES INFLATION
33 ADJUSTMENT ACT IMPROVEMENTS ACT OF 2015 (P.L. 114-74; 129 STAT. 599).

34 I. The commission shall have authority to assess all civil
35 penalties provided in this section, giving due consideration to the
36 appropriateness of the penalty with respect to the gravity of the
37 violation, the number of employees employed by the employer, the good
38 faith of the employer and the history of previous violations under this
39 article.

40 J. Civil penalties owed under this article shall be paid to the
41 commission for deposit in the state general fund. After an order or
42 decision on a civil penalty becomes final pursuant to section 23-417,
43 23-421 or 23-423, the civil penalty shall act as a judgment against the
44 employer. The commission shall file the civil penalty in the office of
45 the clerk of the superior court in any county in this state and the clerk

1 shall enter the civil penalty in the civil order book and judgment docket.
2 When the civil penalty is filed and entered it is a lien for eight years
3 ~~from~~ AFTER the date of the final order or decision on the property of the
4 employer located in the county. Execution may issue on the civil penalty
5 within eight years in the same manner and with like effect as a judgment
6 of the superior court. The civil penalty judgment shall accrue interest
7 pursuant to section 44-1201. The commission may recover reasonable
8 attorney fees incurred pursuant to this section.

9 Sec. 3. Section 23-908, Arizona Revised Statutes, is amended to
10 read:

11 23-908. Injury reports by employer and physician; schedule of
12 fees; notification; public meeting; violation;
13 classification

14 A. Every employer that is affected by this chapter, and every
15 physician who attends an injured employee of that employer, shall file
16 with the commission and the employer's insurance carrier from time to time
17 a full and complete report of every known injury to the employee arising
18 out of or in the course of employment and resulting in loss of life or
19 injury REQUIRING MEDICAL TREATMENT. The report shall be furnished to the
20 commission and the insurance carrier at times and in the form and detail
21 the commission prescribes, and the report shall make special answers to
22 all questions required by the commission under its rules. FOR THE
23 PURPOSES OF THIS SUBSECTION, MEDICAL TREATMENT DOES NOT INCLUDE ANY
24 ONETIME, SHORT-TERM TREATMENT BY NONMEDICAL STAFF THAT REQUIRES LITTLE
25 TECHNOLOGY OR TRAINING TO ADMINISTER, INCLUDING TREATMENT OF MINOR
26 SCRATCHES, CUTS, BURNS AND SPLINTERS AND OTHER ISSUES THAT ORDINARILY DO
27 NOT REQUIRE MEDICAL CARE.

28 B. The commission shall fix a schedule of fees to be charged by
29 physicians, physical therapists or occupational therapists attending
30 injured employees and, subject to subsection C of this section, for
31 prescription medicines required to treat an injured employee under this
32 chapter. Notwithstanding subsection C of this section, the schedule of
33 fees may include other reimbursement guidelines for medications dispensed
34 in settings that are not accessible to the general public. The commission
35 shall annually review the schedule of fees. For the purposes of this
36 subsection, settings that are not accessible to the general public do not
37 include mail order pharmacies delivering pharmaceutical services to
38 workers' compensation claimants, if both of the following apply:

39 1. The pharmacy does not limit or restrict access to claimants with
40 an affiliation to a medical provider or other entity.

41 2. Any medical provider or other entity referring a claimant to the
42 pharmacy does not receive or accept any rebate, refund, commission,
43 preference or other consideration as compensation for the referral.

1 C. If a schedule of fees for prescription medicines adopted
2 pursuant to subsection B of this section includes provisions regarding the
3 use of generic equivalent drugs or interchangeable biological products,
4 those provisions shall comply with section 32-1963.01, subsections A, B
5 and D through L. If the commission considers the adoption of fee schedule
6 provisions that involve specific prices, values or reimbursements for
7 prescription drugs, the commission shall base the adoption on studies or
8 practices that are validated and accepted in the industry, including the
9 applicability of formulas that use average wholesale price, plus a
10 dispensing fee, and that have been made publicly available for at least
11 one hundred eighty days before any hearing conducted by the commission.
12 Before the commission takes final action on the schedule of fees pursuant
13 to this subsection and subsection B of this section, except during a
14 public health emergency, the commission shall:

15 1. Prominently post on its publicly accessible website the proposed
16 schedule of fees at least thirty days before conducting a public hearing
17 on that proposed schedule of fees.

18 2. Hold at least one meeting that all interested parties may
19 jointly attend and interactively participate in after posting the proposed
20 schedule of fees but before conducting the hearing on the proposed
21 schedule of fees.

22 3. At least seven business days in advance, prominently post on its
23 publicly accessible website the final proposed schedule of fees to be
24 acted on for adoption.

25 D. Notwithstanding section 12-2235, information obtained by any
26 physician or surgeon examining or treating an injured person shall not be
27 considered a privileged communication if that information is requested by
28 interested parties for a proper understanding of the case and a
29 determination of the rights involved. Hospital records of an employee
30 concerning an industrial claim shall not be considered privileged if
31 requested by an interested party in order to determine the rights
32 involved. Medical information from any source pertaining to conditions
33 unrelated to the pending industrial claim shall remain privileged.

34 E. When an accident occurs to an employee, the employee shall
35 forthwith report the accident and the injury resulting from the accident
36 to the employer, and any physician employed by the injured employee shall
37 forthwith report the accident and the injury resulting from the accident
38 to the employer, the insurance carrier and the commission.

39 F. If an accident occurs to an employee, the employer may designate
40 in writing a physician chosen by the employer, who shall be allowed by the
41 employee, or any person in charge of the employee, to make one examination
42 of the injured employee in order to ascertain the character and extent of
43 the injury occasioned by the accident. The physician so chosen shall
44 forthwith report to the employer, the insurance carrier and the commission
45 the character and extent of the injury as the physician ascertains. If

1 the accident is not reported by the employee or the employee's physician
2 forthwith, as required, or if the injured employee or those in charge of
3 the employee refuse to allow the employer's physician to make the
4 examination, and the injured employee is a party to the refusal, no
5 compensation shall be paid for the injury claimed to have resulted from
6 the accident. The commission may relieve the injured person or that
7 person's dependents from the loss or forfeiture of compensation if it
8 believes after investigation that the circumstances attending the failure
9 on the part of the employee or physician to report the accident and injury
10 are such as to have excused them.

11 G. Within ten days after receiving notice of an accident, the
12 employer shall inform the insurance carrier and the commission on the
13 forms and in the manner as prescribed by the commission.

14 H. Immediately on notice to the employer of an accident resulting
15 in an injury to an employee, the employer shall provide the employee with
16 the name and address of the employer's insurance carrier, the policy
17 number and the expiration date.

18 I. Any person failing or refusing to comply with this section is
19 guilty of a petty offense.

20 J. Subsection B of this section does not prohibit:

21 1. A health care provider or pharmacy from entering into a separate
22 contract or network that governs fees, in which case reimbursement shall
23 be made according to the applicable contracted charge or negotiated rate.

24 2. An employer from directing medical, surgical or hospital care
25 pursuant to section 23-1070.

26 Sec. 4. Section 23-963.01, Arizona Revised Statutes, is amended to
27 read:

28 23-963.01. Policies with deductible coverage; medical-only
29 loss

30 A. Notwithstanding ~~the provisions of~~ section 23-963, an insurance
31 carrier authorized to transact workers' compensation insurance in this
32 state may offer deductible coverage to employers. Deductible coverage
33 shall be effected by attaching a benefits deductible endorsement to the
34 policy. The endorsement shall specify whether loss adjustment expenses
35 are to be treated as advancements within the deductible to be reimbursed
36 by the employer. The policyholder exercising the deductible option shall
37 choose only one deductible amount. Premium reductions for deductibles
38 shall be determined before ~~application of~~ APPLYING any experience
39 modification, premium surcharge or premium discount. If an insurance
40 carrier offers deductible coverage to an employer, the employer shall
41 submit a certified copy of the employer's most recent financial statement
42 to the insurance carrier to justify the deductible amount the employer
43 chooses. The insurance carrier shall retain a copy of the financial
44 statement for three years.

1 B. Any compensable claim for benefits shall be paid by the
2 carrier. The employer shall reimburse the carrier for any deductible
3 amounts paid by the carrier. The employer is liable for reimbursement up
4 to the limit of the chosen deductible. The payment or nonpayment of
5 deductible amounts by the insured employer to the carrier shall be treated
6 under the policy in the same manner as payment or nonpayment of premiums.

7 C. The nonpayment of deductible amounts by the insured employer to
8 the carrier under subsection B of this section shall not relieve the
9 insurance carrier from ~~payment of~~ PAYING compensation for injuries or
10 death sustained by an employee during the period of time the agreement,
11 contract or policy was in effect. No agreements, contracts or policies
12 providing deductible amounts for workers' compensation coverage shall be
13 terminated retroactively for nonpayment of deductible amounts.

14 D. Losses subject to the deductible shall be reported and recorded
15 as losses for purposes of calculating rates for a policyholder on the same
16 basis as losses under policies providing first dollar coverage.

17 E. NOTWITHSTANDING ANY OTHER LAW, FOR ANY CLAIM INVOLVING
18 MEDICAL-ONLY LOSS, ANY EXPERIENCE RATING ADJUSTMENT AS DETERMINED BY A
19 NATIONAL NONPROFIT INSURANCE RATING ORGANIZATION SHALL BE APPLIED TO
20 REDUCE THE IMPACT OF THE LOSS IN THE EMPLOYER'S EXPERIENCE MODIFICATION
21 CALCULATION. FOR THE PURPOSES OF THIS SUBSECTION, "MEDICAL-ONLY LOSS"
22 MEANS LOSS THAT HAS NO INDEMNITY VALUE REFLECTING LOST WAGES.

APPROVED BY THE GOVERNOR JULY 6, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 6, 2022.