HB 2197

Introduced by
Representatives Biasiucci: Bliss, Contreras L, Diaz, Gillette, Martinez, Wilmeth; Senator Borrelli

AN ACT

AMENDING SECTIONS 23-351 AND 23-364, ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT PRACTICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-351, Arizona Revised Statutes, is amended to read:

23-351. Designation of paydays for employees; payment; exceptions; violation; classification; applicability; definition

A. Each employer in this state shall designate two or more days in each month, not more than sixteen days apart, as fixed paydays for payment of wages to the employees.

B. Notwithstanding subsection A of this section, each employer in this state whose principal place of business is located outside of this state and whose payroll system is centralized outside of this state may designate one or more days in each month as fixed paydays for payment of wages to the following employees:

1. Professional, administrative or executive employees or employees employed in the capacity of an outside salesman as those terms are defined under the fair labor standards act of 1938, as amended.

2. Employees employed in a supervisory capacity as defined under the national labor relations act.

3. Employees who have entered into a contract to play minor league baseball and who are compensated pursuant to the terms of a collective bargaining agreement that expressly provides for the wages and working conditions of employees.

C. Each employer, on each of the regular paydays, shall pay to the employees all wages due the employees up to that date, except:

1. In the case of employees remaining in the service of any such employer, with the exception of school district employees or persons employed by an employee leasing firm that contracts with a school district, all wages other than overtime or exception pay not to exceed five days of labor may be withheld. School districts or employee leasing firms that contract with a school district may withhold wages for up to seven business days during their normal two-week payroll processing cycle. An employer other than a school district or employee leasing firm that contracts with a school district may satisfy the requirements of this paragraph by any of the following:

(a) Personally delivering the wages to the employee not later than five business days after the end of the most recent pay period.

(b) Depositing the wages in the United States mail not later than five business days after the end of the most recent pay period for delivery to an address specified by the employee.

(c) Personally delivering the wages to the employee not later than ten days after the end of the most recent pay period for an employer whose payroll system is centralized outside of this state.
2. In the case of employees of school districts or of the Arizona state schools for the deaf and the blind, the annual salary may be prorated in any number of payments, and the employee may select whether to have the salary prorated or paid during the actual months worked. If the employee's salary is prorated, all payments still due at the close of the school attendance year or fiscal year may at the option of the employee be paid in either a lump sum or paid within a period of two months after the close of the fiscal year. If the employee's salary is prorated, the employee's salary under the contract may be prorated into equal payments and paid beginning with the first pay period that the employee works.

3. Overtime or exception pay shall be paid not later than sixteen days after the end of the most recent pay period.

D. An employer may choose one of the following methods to pay wages to employees under subsection A of this section:

1. In lawful currency of the United States.
2. In negotiable bank checks.
3. In the case of this state or any political subdivision of this state, warrants payable on demand and bearing even date with the payday.
4. With the written consent of the employee, by deposit on the payday to the employee's credit at a financial institution of the employee's choice that is a member of the federal deposit insurance corporation or any other comparable federal or state agency.
5. If the employer has offered deposit on the payday to the employee's credit at a financial institution of the employee's choice that is a member of the federal deposit insurance corporation or any other comparable federal or state agency and the employee does not provide consent and does not designate a financial institution, by deposit on the payday to the employee's credit to a payroll card account.

E. When an employee's wages are paid by deposit in a financial institution the employee shall be furnished with a written or electronic statement of the employee's earnings and withholdings. Any wage deposit plan adopted by an employer shall entitle the employee to one withdrawal for each deposit, free of any service charge to the employee. The consent of an employee for payment of wage by deposit in a financial institution shall not constitute a prior assignment of wages to the financial institution and is revocable at any time before the transmittal to the financial institution by the employer. A person shall not be denied employment, be discharged or be reprimanded for refusal to consent to payment of wage by deposit in a financial institution.

F. When an employee's wages are paid to a payroll card account the employee shall be furnished with a written or electronic statement of the employee's earnings and withholdings. A payroll card account plan adopted by an employer shall entitle the employee to one free withdrawal for each
deposit of wages per pay period but not more frequently than once per week. An employer shall also provide a list of all fees associated with the use of an employer provided payroll card account to an employee who receives wages by deposit to a payroll card account.

G. Subsection B of this section does not apply to employees whose salaries are subject to provisions of collective bargaining agreements.

H. Each employer in this state, in its discretion, may pay all wages due to an employee by deposit on the payday at a financial institution of the employee’s choice or, if the employee does not designate a financial institution, to a payroll card account. For the purposes of this subsection, “financial institution” means a member of the federal deposit insurance corporation or of any other comparable federal or state agency.

I. Any employer who violates this section is guilty of a petty offense.

J. The provisions of subsection C, paragraph 1 of this section relating to the payment of wages by an employee leasing firm that contracts with a school district apply only to employees of the employee leasing firm who are placed at a school district and not to any other employees who are employed or contracted by the employee leasing firm.

K. For the purposes of this section, “employee leasing firm” means a company that places its contracted, leased and coemployed employees in administrator, certified, classified or extracurricular positions with a school district.

Sec. 2. Subject to the requirements of article IV, part 1, section 1, Constitution of Arizona, section 23-364, Arizona Revised Statutes, is amended to read:

23-364. Enforcement; definitions

A. The commission is authorized to enforce and implement this article and may promulgate regulations to do so. For the purposes of this section: (1) “article” shall mean both article 8 and article 8.1 of this chapter; (2) “earned paid sick time” is as defined in section 23-371, Arizona Revised Statutes; (3) “employer” shall refer to the definition of employer for purposes of minimum wage enforcement and shall refer to the definition of employer for purposes of earned paid sick time enforcement; and (4) “retaliation” shall mean denial of any right guaranteed under article 8 and article 8.1 of this chapter and any threat, discharge, suspension, demotion, reduction of hours, or any other adverse action against an employee for the exercise of any right guaranteed herein, including any sanctions against an
employee who is the recipient of public benefits for rights guaranteed herein. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this article.

B. No employer or other person shall discriminate or subject any person to retaliation for asserting any claim or right under this article, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

C. Any person or organization may file an administrative complaint with the commission charging that an employer has violated this article as to any employee or other person. When the commission receives a complaint, the commission may review records regarding all employees at the employer's worksite in order to protect the identity of any employee identified in the complaint and to determine whether a pattern of violations has occurred. The name of any employee identified in a complaint to the commission shall be kept confidential as long as possible. Where the commission determines that an employee's name must be disclosed in order to investigate a complaint further, it may so do only with the employee's consent.

D. Employers shall post notices in the workplace, in such format specified by the commission, notifying employees of their rights under this article. Employers shall provide their business name, address, and telephone number in writing to employees upon hire. Employers shall maintain payroll records showing the hours worked for each day worked, and the wages and earned paid sick time paid to all employees for a period of four years. Failure to do so shall raise a rebuttable presumption that the employer did not pay the required minimum wage rate or earned paid sick time. The commission may by regulation reduce or waive the recordkeeping and posting requirements herein for any categories of small employers whom it finds would be unreasonably burdened by such requirements. Employers shall permit the commission or a law enforcement officer to inspect and copy payroll or other business records, shall permit them to interview employees away from the worksite, and shall not hinder any investigation. Such information provided shall keep confidential except as is required to prosecute violations of this article. Employers shall permit an employee or his or her designated representative to inspect and copy payroll records pertaining to that employee.
E. A civil action to enforce this article may be maintained in a court of competent jurisdiction by a law enforcement officer or by any private party injured by a violation of this article.

F. Any employer who violates recordkeeping, posting, or other requirements that the commission may establish under this article shall be subject to a civil penalty of at least $250 dollars for a first violation, and at least $1,000 dollars $1,000 for each subsequent or willful WILFUL violation and may if the commission or court determines appropriate, MAY be subject to special monitoring and inspections.

G. Any employer who fails to pay the wages or earned paid sick time required under this article shall be required to pay the employee the balance of the wages or earned paid sick time owed, including interest thereon, and an additional amount equal to twice the underpaid wages or earned paid sick time. Any employer who retaliates against an employee or other person in violation of this article shall be required to pay the employee an amount set by the commission or a court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars $150 for each day that the violation continued or until legal judgment is final. The commission and the courts shall have the authority to order payment of such unpaid wages, unpaid earned sick time, other amounts, and civil penalties and to order any other appropriate legal or equitable relief for violations of this article. Civil penalties shall be retained by the agency that recovered them and used to finance activities to enforce this article. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs of suit.

H. A civil action to enforce this article may be commenced no NOT later than two years after a violation last occurs, or three years in the case of a willful WILFUL violation, and may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. The statute of limitations shall be tolled during any investigation of an employer by the commission or other law enforcement officer, but such investigation shall not bar a person from bringing a civil action under this article. No verbal or written agreement or employment contract may waive any rights under this article.

I. The legislature may by statute raise the minimum wage established under this article, extend coverage, or increase penalties. A county, city, or town may by ordinance regulate minimum wages and benefits within its geographic boundaries but may not provide for a minimum wage lower than that prescribed in this article. State agencies, counties, cities, towns, and other political subdivisions of the state may consider violations of this article in determining whether employers may receive or renew public contracts, financial assistance or licenses. This
article shall be liberally construed in favor of its purposes and shall not limit the authority of the legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this article.

J. THIS ARTICLE AND ANY OTHER MINIMUM WAGE OR RECORDKEEPING REQUIREMENTS CONCERNING HOURS WORKED RELATED TO MINIMUM WAGE IN THIS CHAPTER DO NOT APPLY TO ANY EMPLOYEE WHO HAS ENTERED INTO A CONTRACT TO PLAY MINOR LEAGUE BASEBALL AND WHO IS COMPENSATED PURSUANT TO THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT THAT EXPRESSLY PROVIDES FOR THE WAGES AND WORKING CONDITIONS OF EMPLOYEES.

Sec. 3. Requirements for enactment; three-fourths vote

Pursuant to article IV, part 1, section 1, Constitution of Arizona, section 23-364, Arizona Revised Statutes, as amended by this act, is effective only on the affirmative vote of at least three-fourths of the members of each house of the legislature.

Sec. 4. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.