

House Engrossed

industrial commission of Arizona; continuation

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2209

AN ACT

AMENDING SECTIONS 23-108.03 AND 23-408, ARIZONA REVISED STATUTES;
REPEALING SECTION 41-3024.20, ARIZONA REVISED STATUTES; AMENDING TITLE 41,
CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION
41-3027.09; RELATING TO THE INDUSTRIAL COMMISSION OF ARIZONA.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-108.03, Arizona Revised Statutes, is amended
3 to read:

4 23-108.03. Performance of certain powers and duties;
5 definition

6 A. The industrial commission shall be responsible for determining
7 the policy of the commission.

8 B. Any powers and duties prescribed by law to the commission in
9 this chapter and chapters 2 and 6 of this title, whether ministerial or
10 discretionary, may by resolution be delegated by the commission to the
11 director or any of its department heads or assistants, provided, that the
12 commission shall not delegate its power or duty to:

- 13 1. Make rules and regulations.
- 14 2. Commute awards to a lump sum.
- 15 3. License self-insurers.

16 C. The commission shall be responsible for the official acts of its
17 employees acting in the name of the commission and by its delegated
18 authority.

19 D. STATE LABOR DEPARTMENT DETERMINATIONS, PENALTIES AND FINES FOR
20 LABOR VIOLATIONS SHALL BE CONSIDERED, AUTHORIZED AND DETERMINED BY A
21 SUPERMAJORITY VOTE OF THE COMMISSIONERS. THE COMMISSIONERS SHALL CONSIDER
22 WHETHER A VIOLATION CONTINUES AFTER THE EMPLOYER'S COURSE OF CONDUCT HAS
23 CEASED.

24 E. FOR THE PURPOSES OF THIS SECTION, "SUPERMAJORITY" MEANS AN
25 AFFIRMATIVE VOTE OF TWO-THIRDS OF COMMISSIONERS PRESENT AND VOTING.

26 Sec. 2. Section 23-408, Arizona Revised Statutes, is amended to
27 read:

28 23-408. Inspection of places and practices of employment;
29 closing conference; prohibitions; employee
30 initiation of investigation; violation;
31 classification; injunction

32 A. Except as prescribed in section 23-432, subsection E, the
33 director of the division of occupational safety and health, or the
34 director's authorized representative, on presentation of credentials,
35 shall be permitted to inspect places of employment, question employees and
36 investigate conditions, practices or matters in connection with employment
37 subject to this article at reasonable times, as the director or the
38 director's authorized representative may deem appropriate to determine
39 whether any person has violated any provision of this article or any rule
40 or regulation issued pursuant to this article or that may aid in the
41 enforcement of this article. An employer or other person shall not refuse
42 to admit the director or the director's authorized representatives to any
43 place or refuse to permit the inspection if the proper credentials are
44 presented and the inspection is made at a reasonable time.

1 B. In making inspections and investigations, the director or the
2 director's authorized representative may require the attendance and
3 testimony of witnesses and the production of evidence under oath.
4 Witnesses shall be paid the same fees and mileage paid to witnesses in the
5 courts of this state. If any person fails or refuses to obey such an
6 order, the director or the director's authorized representative may apply
7 to any superior court in any county where the person is found, resides or
8 transacts business for an order requiring the person to produce evidence
9 and to give testimony as ordered. Failure to obey such an order is
10 contempt of court.

11 C. The director or the director's authorized representative shall
12 inspect at least every six months any operation that mixes rock, sand,
13 gravel or similar materials with water and cement or with asphalt and that
14 is not included in the definition of mine in section 27-301. The director
15 or the director's authorized representative shall monitor and work with
16 the mine inspector only to the extent necessary to ensure this state's
17 compliance with federal occupational safety and health act standards,
18 (P.L. 91-596).

19 D. Notice of an intended inspection shall not be given to an
20 employer before the time of actual entry on the workplace, except by
21 specific authorization by the director.

22 E. A representative of the employer and a representative authorized
23 by the employer's employees shall be given an opportunity to accompany the
24 director or the director's authorized representative during the physical
25 inspection of any workplace for the purpose of aiding the
26 inspection. Where there is no authorized employee representative, the
27 director or the director's authorized representative shall consult a
28 reasonable number of employees concerning matters of safety and health in
29 the workplace.

30 F. THE DIRECTOR MAY NOT ALLOW ANY INDIVIDUAL TO ACCOMPANY AN
31 INSPECTOR WHEN CONDUCTING INSPECTIONS FOR THE INDUSTRIAL COMMISSION OF
32 ARIZONA PURSUANT TO THIS SECTION UNLESS THE INDIVIDUAL IS ANY OF THE
33 FOLLOWING:

- 34 1. AN EMPLOYEE OF THE EMPLOYER BEING INSPECTED.
- 35 2. A SAFETY CONSULTANT, ATTORNEY OR OTHER AGENT OF THE EMPLOYER OR
36 A PERSON PRESENT WITH THE CONSENT OF THE EMPLOYER.
- 37 3. THE AUTHORIZED EMPLOYEE REPRESENTATIVE, WHICH IS DEFINED TO BE
38 THE AGENT OF A LABOR ORGANIZATION THAT HAS A COLLECTIVE BARGAINING
39 RELATIONSHIP WITH THE EMPLOYER THAT REPRESENTS EMPLOYEES WHO ARE MEMBERS
40 OF THE COLLECTIVE BARGAINING UNIT.
- 41 4. OTHERWISE REQUIRED BY LAW TO BE PRESENT, PROVIDED THAT THE
42 EMPLOYER HAS THE RIGHT TO REQUIRE THE FOLLOWING CONDITIONS:
 - 43 (a) THAT NO MORE THAN ONE SUCH INDIVIDUAL BE PRESENT.

1 (b) THAT THE INDIVIDUAL POSSESS AND USE PERSONAL PROTECTIVE
2 EQUIPMENT AND OTHER SAFETY EQUIPMENT APPLICABLE TO THE PLACE OF EMPLOYMENT
3 TO BE INSPECTED.

4 (c) THAT THE INDIVIDUAL HAS ALREADY BEEN TRAINED ON ANY SAFETY
5 REQUIREMENTS APPLICABLE TO THE PLACE OF EMPLOYMENT TO BE INSPECTED.

6 (d) THAT THE INDIVIDUAL HAS WORKERS COMPENSATION INSURANCE COVERAGE
7 THAT NAMES THE EMPLOYER AS AN ADDITIONAL INSURED.

8 (e) THAT THE INDIVIDUAL EXECUTE A CONTRACT TO PROHIBIT THE
9 DISCLOSURE OF ANY TRADE SECRETS OR CONFIDENTIAL, PROPRIETARY INFORMATION
10 OF THE EMPLOYER THAT THE PERSON MAY ACQUIRE AS A RESULT OF THE INSPECTION.

11 ~~F.~~ G. Except as provided in section 23-426, information and facts
12 developed by the commission, the director or any employee of the
13 commission or division in the course of any inspection or investigation
14 are public records subject to inspection pursuant to title 39, chapter 1,
15 article 2, if, pursuant to section 23-415, subsection D, the inspection or
16 investigation has been closed or a citation has been issued. Such
17 information and facts shall not be admissible in any court or before any
18 administrative body except pursuant to this article. Notwithstanding this
19 subsection, the director or any commission employee is not required to
20 appear at any deposition, trial or hearing concerning a division
21 inspection or investigation unless the appearance is related to a hearing
22 held pursuant to this article. Hearings held pursuant to this article are
23 open to the public.

24 ~~G.~~ H. During the inspection or investigation and in deciding
25 whether to recommend and issue a citation, the director or the director's
26 authorized representative and the commission may consider whether an
27 employee has committed misconduct by violating the employer's policies, if
28 any, regarding substance abuse while working, as evidenced by the results
29 of testing for substance abuse or other evidence of impairment while
30 working.

31 ~~H.~~ I. An employee of the division or the commission may not:

32 1. Before, during or after an inspection or investigation,
33 communicate to an employer that the employer should not be represented by
34 an attorney or that the employer may be treated more favorably by the
35 division or the commission if the employer is not represented by an
36 attorney.

37 2. Conduct an audio recording of an oral statement provided during
38 an interview without the knowledge and consent of the person being
39 interviewed. The employee of the division or the commission shall inform
40 the person being interviewed of the person's right to receive a copy of
41 the recorded oral statement within a reasonable time.

42 3. Obtain a written statement during an interview without informing
43 the person of the person's right to receive a copy of the written
44 statement within a reasonable time.

1 Sec. 6. Legislative Intent

2 It is the intent of the legislature to request the joint legislative
3 audit committee to assign the sunset review of the industrial commission
4 of Arizona to the office of the auditor general to conduct a performance
5 audit.

6 Sec. 7. Retroactivity

7 Sections 3 and 4 of this act apply retroactively to from and after
8 July 1, 2024.