House Engrossed Senate Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 187

SENATE BILL 1125

AN ACT

AMENDING SECTIONS 23-418.01 AND 23-901, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 23-418.01, Arizona Revised Statutes, is amended to read:

23-418.01. Additional penalty for wilful or repeated violation causing employee permanent disability or death covered by workers' compensation; payment to employee; enforcement

A. An additional penalty of twenty-five thousand dollars shall be assessed by the commission against an employer who is assessed a penalty under section 23-418, subsection A~~,~~ for each employee injury resulting in permanent disability or death if the commission finds all of the following:

1. The employee injury resulting in permanent disability or death was caused by the violation for which the employer is assessed a penalty under section 23-418, subsection A.

2. Compensation benefits are paid UNDER CHAPTER 6 OF THIS TITLE EITHER:

(a) To the injured employee. ~~, or~~

(b) In the event of death, ~~his~~ TO THE EMPLOYEE'S dependents. ~~, under chapter 6 of this title~~ THE REQUIREMENT OF THIS SUBDIVISION IS SATISFIED IF AN EMPLOYEE DID NOT HAVE ANY DEPENDENTS FOR WHICH COMPENSATION BENEFITS WOULD HAVE OTHERWISE BEEN PAID UNDER CHAPTER 6 OF THIS TITLE.

3. The violation for which the employer is assessed a penalty under section 23-418, subsection A~~,~~ did not result from the injured or deceased employee's disobedience to specific instructions given to the employee regarding the job condition causing ~~his~~ THE EMPLOYEE'S injury or death or relating to the safety standards applicable to that job condition.

B. Each additional penalty assessed under subsection A of this section shall be paid to the injured employee, or in the event of death, ~~his~~ THE EMPLOYEE'S dependents OR THE EMPLOYEE'S ESTATE IF THE EMPLOYEE DID NOT HAVE ANY DEPENDENTS, in addition to the benefits paid under chapter 6 of this title.

C. If an employer requests a hearing on an additional penalty assessed under this section, the commission may either hear the issues raised pursuant to the hearing procedures under this article or may refer the matter to an administrative law judge assigned to hear matters relating to the workers' compensation claim under chapter 6 of this title. If the hearing procedures are under this article, the procedures for further review or appeal shall be in accordance with this article. If the hearing procedures are under chapter 6 of this title, the procedures for further review or appeal shall be in accordance with chapter 6, article 3 of this title. An additional penalty under this section that becomes final shall operate as a judgment against the employer and may be enforced by either the commission or the injured employee, or in the case of death, ~~his~~ THE EMPLOYEE'S dependents OR THE EMPLOYEE'S ESTATE IF THE EMPLOYEE DID NOT HAVE ANY DEPENDENTS, and all lawful remedies for the collection of judgments, including provisional remedies,

shall be available. This section does not create any right of action or recovery against the employer's workers' compensation insurance carrier, and the additional penalty provided by this section is not a compensation benefit under chapter 6 of this title and is not subject to the payment of attorney fees.

Sec. 2. Section 23-901, Arizona Revised Statutes, is amended to read:

23-901. Definitions

In this chapter, unless the context otherwise requires:

1. "Award" means the finding or decision of an administrative law judge or the commission as to the amount of compensation or benefit due an injured employee or the dependents of a deceased employee.

2. "Client" means an individual, association, company, firm, partnership, corporation or any other legally recognized entity that is subject to ~~the provisions of~~ this chapter and that enters into a professional employer agreement with a professional employer organization.

3. "Co-employee" means every person employed by an injured employee's employer.

4. "Commission" means the industrial commission of Arizona.

5. "Compensation" means the compensation and benefits provided by this chapter.

6. "Employee", "workman", "worker" and "operative" means:

(a) Every person in the service of the state or a county, city, town, municipal corporation or school district, including regular members of lawfully constituted police and fire departments of cities and towns, whether by election, appointment or contract of hire.

(b) Every person in the service of any employer subject to this chapter, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is both:

(i) Casual.

(ii) Not in the usual course of the trade, business or occupation of the employer.

(c) Lessees of mining property and their employees and contractors engaged in the performance of work which is a part of the business conducted by the lessor and over which the lessor retains supervision or control are within the meaning of this paragraph employees of the lessor, and are deemed to be drawing wages as are usually paid employees for similar work. The lessor may deduct from the proceeds of ores mined by the lessees the premium required by this chapter to be paid for such employees.

(d) Regular members of volunteer fire departments organized pursuant to title 48, chapter 5, article 1, regular firemen of any volunteer fire department, including private fire protection service organizations, organized pursuant to title 10, chapters 24 through 40, volunteer firemen serving as members of a fire department of any incorporated city or town or an unincorporated area without pay or without full pay and on a part-time basis, and voluntary policemen and volunteer firemen serving in any

1 incorporated city, town or unincorporated area without pay or without full
2 pay and on a part-time basis, are deemed to be employees, but for the
3 purposes of this chapter, the basis for computing wages for premium payments
4 and compensation benefits for regular members of volunteer fire departments
5 organized pursuant to title 48, chapter 5, article 1, or organized pursuant
6 to title 10, chapters 24 through 40, regular members of any private fire
7 protection service organization, volunteer firemen and volunteer policemen of
8 these departments or organizations shall be the salary equal to the beginning
9 salary of the same rank or grade in the full-time service with the city,
10 town, volunteer fire department or private fire protection service
11 organization, provided if there is no full-time equivalent then the salary
12 equivalent shall be as determined by resolution of the governing body of the
13 city, town or volunteer fire department or corporation.
14 (e) Members of the department of public safety reserve, organized
15 pursuant to section 41-1715, are deemed to be employees. For the purposes of
16 this chapter, the basis for computing wages for premium payments and
17 compensation benefits for a member of the department of public safety reserve
18 who is a peace officer shall be the salary received by officers of the
19 department of public safety for their first month of regular duty as an
20 officer. For members of the department of public safety reserve who are not
21 peace officers, the basis for computing premiums and compensation benefits is
22 four hundred dollars a month.
23 (f) Any person placed in on-the-job evaluation or in on-the-job
24 training under the department of economic security's temporary assistance for
25 needy families program or vocational rehabilitation program shall be deemed
26 to be an employee of the department for the purpose of coverage under the
27 state workers' compensation laws only. The basis for computing premium
28 payments and compensation benefits shall be two hundred dollars per month.
29 Any person receiving vocational rehabilitation services under the department
30 of economic security's vocational rehabilitation program whose major
31 evaluation or training activity is academic, whether as an enrolled attending
32 student or by correspondence, or who is confined to a hospital or penal
33 institution, shall not be deemed to be an employee of the department for any
34 purpose. Any dividend which the department's vocational rehabilitation
35 program may be entitled to receive from the state compensation fund because
36 of a favorable loss experience for any policy period shall not revert to the
37 state general fund but shall be applied to the department's current premium
38 obligations for workers' compensation coverage for such program.
39 (g) Regular members of a volunteer sheriff's reserve, which may be
40 established by resolution of the county board of supervisors, to assist the
41 sheriff in the performance of the sheriff's official duties. A roster of the
42 current members shall monthly be certified to the clerk of the board of
43 supervisors by the sheriff and shall not exceed the maximum number authorized
44 by the board. Certified members of an authorized volunteer sheriff's reserve
45 shall be deemed to be employees of the county for the purpose of coverage

1 under the Arizona workers' compensation laws and occupational disease
2 disability laws and shall be entitled to receive the benefits of these laws
3 for any compensable injuries or disabling conditions which arise out of and
4 occur in the course of the performance of duties authorized and directed by
5 the sheriff. Compensation benefits and premium payments shall be based upon
6 the salary received by a regular full-time deputy sheriff of the county
7 involved for the first month of regular patrol duty as an officer for each
8 certified member of a volunteer sheriff's reserve. This subdivision shall
9 not be construed to provide compensation coverage for any member of a
10 sheriff's posse who is not a certified member of an authorized volunteer
11 sheriff's reserve except as a participant in a search and rescue mission or a
12 search and rescue training mission.
13 (h) A working member of a partnership may be deemed to be an employee
14 entitled to the benefits provided by this chapter upon written acceptance, by
15 endorsement, at the discretion of the insurance carrier for the partnership
16 of an application for coverage by the working partner. The basis for
17 computing premium payments and compensation benefits for the working partner
18 shall be an assumed average monthly wage of not less than six hundred dollars
19 nor more than the maximum wage provided in section 23-1041 and is subject to
20 the discretionary approval of the insurance carrier. Any compensation for
21 permanent partial or permanent total disability payable to the partner shall
22 be computed on the lesser of the assumed monthly wage agreed to by the
23 insurance carrier on the acceptance of the application for coverage or the
24 actual average monthly wage received by the partner at the time of injury.
25 (i) The sole proprietor of a business subject to this chapter may be
26 deemed to be an employee entitled to the benefits provided by this chapter on
27 written acceptance, by endorsement, at the discretion of the insurance
28 carrier of an application for coverage by the sole proprietor. The basis for
29 computing premium payments and compensation benefits for the sole proprietor
30 shall be an assumed average monthly wage of not less than six hundred dollars
31 nor more than the maximum wage provided by section 23-1041 and is subject to
32 the discretionary approval of the insurance carrier. Any compensation for
33 permanent partial or permanent total disability payable to the sole
34 proprietor shall be computed on the lesser of the assumed monthly wage agreed
35 to by the insurance carrier on the acceptance of the application for coverage
36 or the actual average monthly wage received by the sole proprietor at the
37 time of injury.
38 (j) A member of the Arizona national guard, Arizona state guard or
39 unorganized militia shall be deemed a state employee and entitled to coverage
40 under the Arizona workers' compensation law at all times while the member is
41 receiving the payment of the member's military salary from the state of
42 Arizona under competent military orders or upon order of the governor.
43 Compensation benefits shall be based upon the monthly military pay rate to
44 which the member is entitled at the time of injury, but not less than a
45 salary of four hundred dollars per month, nor more than the maximum provided

by the workers' compensation law. No Arizona compensation benefits shall inure to a member compensable under federal law.

(k) Certified ambulance drivers and attendants who serve without pay or without full pay on a part-time basis are deemed to be employees and entitled to the benefits provided by this chapter and the basis for computing wages for premium payments and compensation benefits for certified ambulance personnel shall be four hundred dollars per month.

(l) Volunteer workers of a licensed health care institution may be deemed to be employees and entitled to the benefits provided by this chapter upon written acceptance by the insurance carrier of an application by the health care institution for coverage of such volunteers. The basis for computing wages for premium payments and compensation benefits for volunteers shall be four hundred dollars per month.

(m) Personnel who participate in a search or rescue operation or a search or rescue training operation that carries a mission identifier assigned by the division of emergency management as provided in section 35-192.01 and who serve without compensation as volunteer state employees. The basis for computation of wages for premium purposes and compensation benefits is the total volunteer man-hours recorded by the division of emergency management in a given quarter multiplied by the amount determined by the appropriate risk management formula.

(n) Personnel who participate in emergency management training, exercises or drills that are duly enrolled or registered with the division of emergency management or any political subdivision as provided in section 26-314, subsection C and who serve without compensation as volunteer state employees. The basis for computation of wages for premium purposes and compensation benefits is the total volunteer man-hours recorded by the division of emergency management or political subdivision during a given training session, exercise or drill multiplied by the amount determined by the appropriate risk management formula.

(o) Regular members of the Arizona game and fish department reserve, organized pursuant to section 17-214. The basis for computing wages for premium payments and compensation benefits for a member of the reserve is the salary received by game rangers and wildlife managers of the Arizona game and fish department for their first month of regular duty.

(p) Every person employed pursuant to a professional employer agreement.

(q) Members of the department of administration capitol police reserve, organized pursuant to section 41-794, are deemed to be employees. For the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for a member of the department of administration capitol police reserve who is a peace officer shall be the salary received by officers of the department of administration for their first month of regular duty as an officer.

7. "General order" means an order applied generally throughout the state to all persons under jurisdiction of the commission.

8. "Heart-related or perivascular injury, illness or death" means myocardial infarction, coronary thrombosis or any other similar sudden, violent or acute process involving the heart or perivascular system, or any death resulting therefrom, and any weakness, disease or other condition of the heart or perivascular system, or any death resulting therefrom.

9. "Insurance carrier" means the state compensation fund and every insurance carrier duly authorized by the director of insurance to write workers' compensation or occupational disease compensation insurance in the state of Arizona.

10. "Interested party" means the employer, the employee, or if the employee is deceased, THE EMPLOYEE'S ESTATE, the surviving spouse or dependents, the commission, the insurance carrier or their representative.

11. "Mental injury, illness or condition" means any mental, emotional, psychotic or neurotic injury, illness or condition.

12. "Order" means and includes any rule, direction, requirement, standard, determination or decision other than an award or a directive by the commission or an administrative law judge relative to any entitlement to compensation benefits, or to the amount thereof, and any procedural ruling relative to the processing or adjudicating of a compensation matter.

13. "Personal injury by accident arising out of and in the course of employment" means any of the following:

(a) Personal injury by accident arising out of and in the course of employment.

(b) An injury caused by the wilful act of a third person directed against an employee because of the employee's employment, but does not include a disease unless resulting from the injury.

(c) An occupational disease which is due to causes and conditions characteristic of and peculiar to a particular trade, occupation, process or employment, and not the ordinary diseases to which the general public is exposed, and subject to section 23-901.01.

14. "Professional employer agreement" means a written contract between a client and a professional employer organization:

(a) In which the professional employer organization expressly agrees to co-employ all or a majority of the employees providing services for the client. In determining whether the professional employer organization employs all or a majority of the employees of a client, any person employed pursuant to the terms of the professional employer agreement after the initial placement of client employees on the payroll of the professional employer organization shall be included.

(b) That is intended to be ongoing rather than temporary in nature.

(c) In which employer responsibilities for worksite employees, including hiring, firing and disciplining, are expressly allocated between the professional employer organization and the client in the agreement.

15. "Professional employer organization" means any person engaged in the business of providing professional employer services. Professional employer organization does not include a temporary help firm or an employment agency.

16. "Professional employer services" means the service of entering into co-employment relationships under this chapter to which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees.

17. "Special order" means an order other than a general order.

18. "State compensation fund" includes the state compensation fund, accident benefit fund and occupational disease compensation fund in existence on January 2, 1969 and shall thereafter include all funds under the jurisdiction of the board of directors of the state compensation fund which have been derived from the assessment of premiums, interest, penalties and investment earnings for the payment of all workers' compensation and occupational disease compensation benefits.

19. "Weakness, disease or other condition of the heart or perivascular system" means arteriosclerotic heart disease, cerebral vascular disease, peripheral vascular disease, cardiovascular disease, angina pectoris, congestive heart trouble, coronary insufficiency, ischemia and all other similar weaknesses, diseases and conditions, and also previous episodes or instances of myocardial infarction, coronary thrombosis or any similar sudden, violent or acute process involving the heart or perivascular system.

20. "Workers' compensation" means workmen's compensation as used in article XVIII, section 8, Constitution of Arizona.

APPROVED BY THE GOVERNOR MAY 12, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2008.