House Engrossed

FILED

MICHELE REAGAN

SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

CHAPTER 325

HOUSE BILL 2410

AN ACT

AMENDING SECTION 23-901, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-1043.05; 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 23-901, 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 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~~ THE LESSEES' employees and contractors engaged in the performance of work that 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 incorporated city, town or unincorporated area without pay or without full pay and on a part-time basis, are deemed to be

employees, but for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for regular members of volunteer fire departments organized pursuant to title 48, chapter 5, article 1, or organized pursuant to title 10, chapters 24 through 40, regular members of any private fire protection service organization, volunteer firemen and volunteer policemen of these departments or organizations shall be the salary equal to the beginning salary of the same rank or grade in the full-time service with the city, town, volunteer fire department or private fire protection service organization, provided if there is no full-time equivalent then the salary equivalent shall be as determined by resolution of the governing body of the city, town or volunteer fire department or corporation.

(e) Members of the department of public safety reserve, organized pursuant to section 41-1715, 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 public safety reserve who is a peace officer shall be the salary received by officers of the department of public safety for ~~their~~ THE OFFICERS' first month of regular duty as an officer. For members of the department of public safety reserve who are not peace officers, the basis for computing premiums and compensation benefits is four hundred dollars a month.

(f) Any person placed in on-the-job evaluation or in on-the-job training under the department of economic security's temporary assistance for needy families program or vocational rehabilitation program shall be deemed to be an employee of the department for the purpose of coverage under the state workers' compensation laws only. The basis for computing premium payments and compensation benefits shall be two hundred dollars per month. Any person receiving vocational rehabilitation services under the department of economic security's vocational rehabilitation program whose major evaluation or training activity is academic, whether as an enrolled attending student or by correspondence, or who is confined to a hospital or penal institution, shall not be deemed to be an employee of the department for any purpose.

(g) Regular members of a volunteer sheriff's reserve, which may be established by resolution of the county board of supervisors, to assist the sheriff in the performance of the sheriff's official duties. A roster of the current members shall monthly be certified to the clerk of the board of supervisors by the sheriff and shall not exceed the maximum number authorized by the board. Certified members of an authorized volunteer sheriff's reserve shall be deemed to be employees of the county for the purpose of coverage under the Arizona workers' compensation laws and occupational disease disability laws and shall be entitled to receive the benefits of these laws for any compensable injuries or disabling conditions that arise out of and occur in the course of the performance of duties authorized and directed by the sheriff. Compensation benefits and

premium payments shall be based ~~upon~~ ON the salary received by a regular full-time deputy sheriff of the county involved for the first month of regular patrol duty as an officer for each certified member of a volunteer sheriff's reserve. This subdivision ~~shall not be construed to~~ DOES NOT provide compensation coverage for any member of a sheriff's posse who is not a certified member of an authorized volunteer sheriff's reserve except as a participant in a search and rescue mission or a search and rescue training mission.

(h) A working member of a partnership may be deemed to be an employee entitled to the benefits provided by this chapter ~~upon~~ ON written acceptance, by endorsement, at the discretion of the insurance carrier for the partnership of an application for coverage by the working partner. The basis for computing premium payments and compensation benefits for the working partner shall be an assumed average monthly wage of not less than six hundred dollars nor more than the maximum wage provided in section 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the partner shall be computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the partner at the time of injury.

(i) The sole proprietor of a business subject to this chapter may be deemed to be an employee entitled to the benefits provided by this chapter on written acceptance, by endorsement, at the discretion of the insurance carrier of an application for coverage by the sole proprietor. The basis for computing premium payments and compensation benefits for the sole proprietor shall be an assumed average monthly wage of not less than six hundred dollars nor more than the maximum wage provided by section 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the sole proprietor shall be computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the sole proprietor at the time of injury.

(j) A member of the Arizona national guard, Arizona state guard or unorganized militia shall be deemed a state employee and entitled to coverage under the Arizona workers' compensation law at all times while the member is receiving the payment of the member's military salary from ~~the~~ THIS state ~~of Arizona~~ under competent military orders or ~~upon~~ ON order of the governor. Compensation benefits shall be based ~~upon~~ ON the monthly military pay rate to which the member is entitled at the time of injury, but not less than a salary of four hundred dollars per month, nor more than the maximum provided by the workers' compensation law. ~~No~~ Arizona compensation benefits shall NOT 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~~ ON 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~~ THE GAME RANGERS' AND WILDLIFE MANAGERS' first month of regular duty.

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

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 every insurance carrier duly authorized by the director of insurance to write workers' compensation or occupational disease compensation insurance in ~~the~~ THIS 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 that 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 OR, FOR HEART-RELATED, PERIVASCULAR OR PULMONARY CASES, SECTION 23-1043.05.

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. "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.

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

Sec. 2. Title 23, chapter 6, article 8, Arizona Revised Statutes, is amended by adding section 23-1043.05, to read:

23-1043.05. <u>Heart-related, perivascular and pulmonary cases; firefighters; definition</u>

A. A HEART-RELATED, PERIVASCULAR OR PULMONARY INJURY, ILLNESS OR DEATH OF A FIREFIGHTER IS PRESUMED TO BE AN OCCUPATIONAL DISEASE AS DEFINED IN SECTION 23-901, PARAGRAPH 13, SUBDIVISION (c), COMPENSABLE PURSUANT TO SECTION 23-1043.01 AND DEEMED TO ARISE OUT OF EMPLOYMENT IF ALL OF THE FOLLOWING APPLY:

1. THE FIREFIGHTER PASSED A PHYSICAL EXAMINATION BEFORE EMPLOYMENT AND THE EXAMINATION DID NOT INDICATE EVIDENCE OF HEART-RELATED, PERIVASCULAR OR PULMONARY INJURY OR ILLNESS.

2. THE FIREFIGHTER RECEIVED A PHYSICAL EXAMINATION THAT IS REASONABLY ALIGNED WITH THE NATIONAL FIRE PROTECTION ASSOCIATION STANDARD ON COMPREHENSIVE OCCUPATIONAL MEDICAL PROGRAM FOR FIRE DEPARTMENTS (NFPA 1582).

3. THE FIREFIGHTER WAS EXPOSED TO A KNOWN EVENT AND THE HEART-RELATED, PERIVASCULAR OR PULMONARY INJURY, ILLNESS OR DEATH OCCURRED WITHIN TWENTY-FOUR HOURS AFTER THE EXPOSURE AND WAS REASONABLY RELATED TO THE EXPOSURE.

B. THE PRESUMPTION PROVIDED IN SUBSECTION A OF THIS SECTION MAY BE REBUTTED BY A PREPONDERANCE OF THE EVIDENCE THAT THERE IS A SPECIFIC CAUSE OF THE HEART-RELATED, PERIVASCULAR OR PULMONARY INJURY, ILLNESS OR DEATH OTHER THAN THE EMPLOYMENT.

C. SUBSECTION A OF THIS SECTION DOES NOT APPLY IF THERE IS EVIDENCE THAT THE FIREFIGHTER'S EXPOSURE TO CIGARETTES OR TOBACCO PRODUCTS OUTSIDE THE SCOPE OF THE FIREFIGHTER'S OFFICIAL DUTIES IS A SUBSTANTIAL CONTRIBUTING CAUSE IN THE DEVELOPMENT OF THE HEART-RELATED, PERIVASCULAR OR PULMONARY INJURY, ILLNESS OR DEATH.

D. FOR THE PURPOSES OF THIS SECTION, "FIREFIGHTER" MEANS A FIREFIGHTER OR VOLUNTEER FIREFIGHTER AS DESCRIBED IN SECTION 23-901, PARAGRAPH 6, SUBDIVISION (d).

APPROVED BY THE GOVERNOR MAY 22, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATES MAY 22, 2017.

Passed the House February 21, 2017

by the following vote: 55 Ayes,

3 Nays, 2 Not Voting

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

Passed the Senate May 4, 2017

by the following vote: 28 Ayes,

2 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

8 day of May, 2017

at 8:36 o'clock A. M.

Secretary to the Governor

Approved this 22nd day of

May 2017

at 4:50 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 22 day of May, 2017

at 6:34 o'clock P M.

Michele Reagan

Secretary of State

H.B. 2410