

2023

R23-15

Arizona Secretary of State  
Administrative Rules Division  
Certified Original Rules

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Code Citation: 20 A.A.C. 05

Title Number: 20

Chapter Number: 05

Title Heading:

**Commerce, Financial Institutions, and Insurance**

Chapter Heading:

**Industrial Commission of Arizona**

Date/Year filed with the office: 2/9/2023

Notice Type: Final

Rule Number: R23-15

Permission to proceed with rulemaking under A.R.S. § 41-1039: Yes

A.R.S. § 41-1039 effective date: September 24, 2022

Archive Notes:

Effective Date: 2/9/2023      If applicable, Supp quarter: 23-1

Register Citation: A.A.R. , Register Date:

R23-15

SECRETARY OF STATE

2023 FEB -9 AM 10: 00

FILED

**AGENCY RECEIPT**  
**NOTICE OF FINAL RULEMAKING**

**1. Agency name:**

Industrial Commission of Arizona

**2. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

**Article, Part, or Section Affected (as applicable)**

**Rulemaking Action**

R20-5-1202

Amend

R20-5-1210

Amend

R20-5-1213

Amend

R23-15

SECRETARY OF STATE

2023 FEB -9 AM 10:00

FILED


AGENCY CERTIFICATE

NOTICE OF FINAL RULEMAKING

- 1. Agency name: Industrial Commission of Arizona
- 2. Chapter heading: Industrial Commission of Arizona
- 3. Code citation for the Chapter: 20 A.A.C. 5
- 4. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, in numerical order:

<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R20-5-1202	Amend
R20-5-1210	Amend
R20-5-1213	Amend

- 5. The rules contained in this package are true and correct as proposed:

6.  December 19, 2022  
 Signature of Agency Chief Executive Officer in ink Date signed

James Ashley Director  
 Printed or typed name of signer Title of signer

R23-15

SECRETARY OF STATE

2023 FEB -9 AM 10: 01

FILED



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## CERTIFICATE OF APPROVAL OF FINAL RULES

1. Agency Name: Industrial Commission of Arizona
2. Chapter Heading: Commerce, Financial Institutions, and Insurance
3. Citation for the Chapter: 20 A.A.C. 5

Subchapters, Articles, Parts and Sections

Action:

R20-5-1202, R20-5-1210, R20-5-1213

Amend

4. The rules described above are approved as final rules.

approved as submitted (R1-6-205(A))

approved in part, returned in part (A.R.S. § 41-1052(C))

approved with changes accepted by the agency (R1-6-205(B))

5. Effective date:

standard 60-day delayed effective date

immediate effective date

other [specify date:            ]

Nicole Sornsin  
Council Chair

Feb 8, 2023

Date of Approval

R23-15



SECRETARY OF STATE  
Gaetano Testini <gaetano.testini@azica.gov>

2023 FEB -9 AM 10: 01

**Fwd: Article 12 Labor: Request for Final Written Approval**

1 message

FILED

**Trevor Laky** <trevor.laky@azica.gov>

Mon, Dec 19, 2022 at 11:36 AM

To: James Ashley <james.ashley@azica.gov>, Gaetano Testini <gaetano.testini@azica.gov>

----- Forwarded message -----

From: **Brian Norman** <bcnorman@az.gov>

Date: Mon, Dec 19, 2022 at 11:33 AM

Subject: Re: Article 12 Labor: Request for Final Written Approval

To: Trevor Laky <trevor.laky@azica.gov>

Your request for final approval is granted.

On Mon, Dec 19, 2022 at 11:09 AM Trevor Laky <trevor.laky@azica.gov> wrote:

Good Afternoon Brian,

Please see the attached request for final written approval to complete rulemaking regarding Article 12.

The public hearing has concluded and there were no public comments.

Please let me know if you have any questions.

Regards,

--

**Trevor Laky**

**Chief of Legislative Affairs**

**Public Information Officer**

Industrial Commission of Arizona

602-542-4478 Office

Trevor.Laky@azica.gov



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Brian Norman

Policy Advisor, Housing, Workforce & Commerce

Office of Arizona Governor Doug Ducey

bcnorman@az.gov | 602.653.6399



NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

**1. Articles and Sections Affected** **Rulemaking Action**

R20-5-1202	Amend
R20-5-1210	Amend
R20-5-1213	Amend

**2. Citations to agency’s statutory rulemaking authority to include the authorizing statute and the implementing statute:**

Authorizing statutes: A.R.S. §§ 23-364, 23-376

Implementing statutes: A.R.S. Title 23, Chapter 2, Articles 8 and 8.1

Note: An exemption from Executive Order 2022-01 was provided for this rulemaking by Mr. Brian Norman, Policy Advisor in the Office of the Arizona Governor, by e-mail dated October 26, 2022. A second exemption from Executive Order 2022-01 was provided for this rulemaking by Mr. Brian Norman, Policy Advisor in the Office of the Arizona Governor, by e-mail dated December 19, 2022.

**3. The effective date of the rules:**

The Industrial Commission of Arizona (the “Commission”) requests an immediate effective date.

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

The Commission requests an immediate effective date under A.R.S. § 41-1032(A)(5) ("To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.").

The amendments to R20-5-1210 provide a less stringent recordkeeping requirements for Arizona employers.

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

**4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 28 A.A.R. 3507, November 11, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 3478, November 11, 2022

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Lisa Padgett  
Address: Industrial Commission of Arizona  
Labor Department  
800 West Washington Street, Suite 403  
Phoenix, AZ 85007  
Telephone: (602) 542-4515  
Fax: (602) 542-8097  
E-mail: LaborAdmin@azica.gov

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Arizona voters approved Proposition 206, the Fair Wages and Healthy Families Act (the "Act"), in November 2016. The Act established a new state minimum wage effective January 1, 2017, and entitles employees to accrue earned paid sick time beginning July 1, 2017. The Act authorizes the Industrial Commission of Arizona (the "Commission") to "enforce and implement" both the minimum wage and earned paid sick time provisions and promulgate regulations consistent with the articles. *See* A.R.S. § 23-364(A); A.R.S. Title 23, Chapter 2, Articles 8 and 8.1. In the earned paid sick time context, the Act provides that "[t]he commission shall be authorized to coordinate implementation and enforcement of [Article 8.1, Earned Paid Sick Time] and shall promulgate appropriate guidelines or regulations for such purposes." A.R.S. § 23-376.

The proposed amendments clarify the rules by including a couple of new definitions, ease the regulatory burden of recordkeeping with respect to specific employees that are under

contract and granted benefits that exceed those contained in A.R.S. § 23-376, ease the regulatory burden of recordkeeping by eliminating unnecessary employer records, and modernize the rules by allowing for service by electronic mail with a party's consent.

**7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Commission did not review or rely on any study relevant to the proposed amended rules.

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

**9. A summary of the economic, small business and consumer impact.**

The proposed amendments will reduce regulatory burden while achieving the Commission's regulatory objectives as prescribed by the Act.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

In R20-5-1202 labels were removed from subsections, consistent with R1-1-408(H).

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

There were no public comments regarding the proposed rules.

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

Not applicable.

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The proposed amended rules do not require issuance of a regulatory permit or license.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to**

**exceed the requirements of federal law:**

Federal law does not address earned paid sick time. The proposed rule amends Arizona's earned paid sick time provisions and do not implicate federal law.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None.

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the proposed rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE  
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA  
ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK TIME  
PRACTICE AND PROCEDURE**

**Section**

**R20-5-1202. Definitions**

**R20-5-1210. General Recordkeeping Requirements**

**R20-5-1213. Findings and Order Issued by the Department**

**R20-5-1202. Definitions**

In this Article, the definitions of A.R.S. §§ 23-362 (version two), 23-371, and 23-364 apply. In addition, unless the context otherwise requires, the following definitions shall apply to both the Act and this Article:

1. “Act” means A.R.S. Title 23, Chapter 2, Articles 8 and 8.1.
2. “Affected employee” means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. “Amount of earned paid sick time available to the employee” means the amount of earned paid sick time or equivalent paid time off that is available to the employee for use in the current year.
4. “Amount of earned paid sick time taken by the employee to date in the year” means the amount of earned paid sick time or equivalent paid time off taken by the employee to date in the current year. Where an employee has used available equivalent paid time off for either the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that usage towards the “amount of earned paid sick time taken by the employee to date in the year.”
5. “Amount of pay the employee has received as earned paid sick time” means the amount of pay the employee has received as earned paid sick time or equivalent paid time off to date in the current year. Where an employee has received pay for equivalent paid time off for the purposes enumerated in A.R.S. § 23-373 or other purposes, the

employer may count that pay towards the “amount of pay the employee has received as earned paid sick time.”

6. “Authorized representative” means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person’s authority to act on behalf of the party.
7. “Casual Basis,” when applied to babysitting services, means employment which is irregular or intermittent.
8. “Commission” means monetary compensation based on:
  - a. A percentage of total sales,
  - b. A percentage of sales in excess of a specified amount,
  - c. A fixed allowance per unit, or
  - d. Some other formula the employer and employee agree to as a measure of accomplishment.
9. “Communicable disease” has the meaning prescribed by A.R.S. § 36-661.
10. “Complainant” means a person or organization filing an administrative complaint under the Act.
11. “Department” means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
12. “Earned sick time” under A.R.S. § 23-364(G) means earned paid sick time.
13. “Employee’s regular paycheck” means a regular payroll record that is readily available to employees and contains the information required by A.R.S. § 23-375(C), including physical or electronic paychecks or paystubs.
14. “Equivalent paid time off” means paid time off provided under a paid leave policy, such as a paid time off policy, that makes available an amount of paid leave sufficient

to meet the accrual requirements of the Act that may be used for the same purposes and under the same conditions as earned paid sick time.

15. "Filing" means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.
16. The term "health care professional" in A.R.S. § 23-373(G) has the same meaning as "health care professional," as defined in this Section.
17. "Health care professional" means any of the following:
  - a. A "physician" as defined by A.R.S. § 36-2351;
  - b. A "physician assistant" as defined by A.R.S. § 32-2501;
  - c. A "registered nurse practitioner" as defined by A.R.S. § 32- 1601.
  - d. A certified nurse midwife who is a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period;
  - e. A dentist licensed under A.R.S. Title 32, Chapter 11, Article 2; or
  - f. A behavioral health provider practicing as:
    - i. A psychologist licensed under A.R.S. Title 32, Chapter 19.1;
    - ii. A clinical social worker licensed under A.R.S. § 32- 3293;
    - iii. A marriage and family therapist licensed under A.R.S. § 32-3311; or
    - iv. A professional counselor licensed under A.R.S. § 32- 3301.
18. "Health care provider" has the meaning prescribed by A.R.S. § 36-661.
19. "Hours worked" means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.
20. "Minimum wage" means the lowest rate of monetary compensation required under the Act.
21. "Monetary compensation" means cash or its equivalent due to an employee by reason of employment.
22. "On duty" means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee's own purpose.

23. “Public benefits” has the same meaning as “state or local public benefit,” as prescribed by A.R.S. § 1-502(I).

24. “Public health emergency” means a state of emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.

“Salaried” means receiving a fixed amount of pay regardless of how many hours are worked each week.

“Salary” means a fixed compensation paid regularly for employment.

25. “Same hourly rate” means the following:

- a. For employees paid on the basis of a single hourly rate, “same hourly rate” shall be the hourly rate the employee would have earned for the period of time in which earned paid sick time or equivalent paid time off is used, but shall in no case be less than minimum wage.
- b. For employees who are paid multiple hourly rates of pay, “same hourly rate” shall be determined in the following order of priority, but shall in no case be less than minimum wage:
  - i. The hourly rate the employee would have earned, if known, for each hour of earned paid sick time or equivalent paid time off used.
  - ii. The weighted average of all hourly rates of pay during the previous pay period.
- e. For employees who are paid a salary, no additional pay is due when the employee’s use of earned paid sick time or equivalent paid time off results in no reduction in the employee’s regular salary during the pay period in which the earned paid sick time or equivalent paid time off is used. “Same hourly rate” for salaried employees shall be determined in the following order of priority, but shall in no case be less than minimum wage:
  - i. The wages an employee earns during each pay period covered by the salary divided by the number of hours agreed to be worked during each pay period,

if the number of hours to be worked during each pay period was previously established.

- ii. The wages an employee earns during each workweek covered by the salary in the current year divided by 40 hours.
- d. For employees paid on a commission, piece-rate, or fee-for-service basis, “same hourly rate” shall be determined in the following order of priority, but shall in no case be less than minimum wage:
  - i. The hourly rate of pay previously agreed upon by the employer and the employee as:
    - (1) A minimum hourly rate for work performed; or
    - (2) An hourly rate for payment of earned paid sick time or equivalent paid time off.
  - ii. The wages that the employee would have been paid, if known, for the period of time in which earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.
  - iii. A reasonable estimation of the commission, piece-rate, or fee-for-service compensation that the employee would have been paid for the period of time in which the earned paid sick time or equivalent paid time off is used divided by the number of hours of earned paid sick time or equivalent paid time off used.
  - iv. The hourly average of all commission, piece rate, or fee-for-service compensation that the employee earned during the previous 90 days, if the employee worked regularly during the previous 90-day period, based on:
    - (1) hours that the employee actually worked; or
    - (2) a 40- hour workweek.
  - v. The hourly average of all commission, piece rate, or fee-for-service compensation that the employee earned during the previous 365 days, based on:
    - (1) hours that the employee actually worked; or

(2) a 40-hour workweek.

e. "Same hourly rate" includes shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) if the employee would have been entitled to the shift differential or premium for the period of time in which earned paid sick time or equivalent paid time off is used.

f. "Same hourly rate" does not include:

- i. Additions to an employee's base rate for overtime or holiday pay;
- ii. Subject to subsection (e), bonuses or other types of incentive pay; and
- iii. Tips or gifts.

26. "Smallest increment that the employer's payroll system uses to account for absences or use of other time" means the smallest increment of time that an employer utilizes, by policy or practice, to account for absences or use of other paid time off.

27. "Tip" means a sum that a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, such as event tickets, passes, or merchandise, are not tips.

28. "Violation" means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.

29. "Willfully" means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.

30. "Workday" means any fixed period of 24 consecutive hours.

31. "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

#### **R20-5-1210. General Recordkeeping Requirements**

A. Payroll records required to be kept under the Act include:

1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period

basis (for example, units produced) when those amounts determine in whole or in part: ~~(1) those employees' the pay period wages; and (2) those employees' earned~~ paid sick time or equivalent paid time off;

2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.

B. Except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:

1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
2. Home address, including zip code;
3. Date of birth, if under 19;
4. Occupation in which employed;
5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;
6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece,

commission on sales, or other basis, including the amount and nature of each payment;

7. Hours worked each workday and total hours worked each workweek;
8. Total daily or weekly ~~straight-time~~ wages due for hours worked during the workday or workweek, ~~exclusive of premium overtime compensation;~~
9. ~~Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;~~
- ~~10.~~9. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;
- ~~11.~~10. Total wages paid each pay period;
- ~~12.~~11. Date of payment and the pay period covered by payment;
- ~~13.~~12. The amount of earned paid sick time available to the employee;
- ~~14.~~13. The amount of earned paid sick time taken by the employee to date in the year;
- ~~15.~~14. The amount of pay the employee has received as earned paid sick time; and
- ~~16.~~16 The employee's earned paid sick time balance. "The employee's earned paid sick time balance" means the sum of earned paid sick time or equivalent paid time-off that is: (1) carried over to the current year; (2) accrued to date in the current year; and (3) provided to date in the current year pursuant to A.R.S. § 23-372(D)(4) or A.A.C. R20-5-1206(F), (G), or (H).

- C. For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in

elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:

1. Records containing the information and data required under subsections (B)(1) through (B)(5), and (B)(~~1410~~) through (B)(~~1413~~) of this Section; and
2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.

D. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:

1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and
2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.

E. With respect to an employee that customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:

1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;
2. Amount of tips the employee reports to the employer;
3. The hourly wage of each tipped employee after taking into consideration the employee's tips;
4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;
5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and
6. Copy of the notice required under R20-5-1207(C).

- F. An employer who makes retroactive payment of wages, voluntarily or involuntarily, shall record on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.
- G. For an employee who is signed to a contract to play minor league baseball and is exempt pursuant to 29 U.S.C. §213(a)(19), an employer shall maintain and preserve records containing the information and data required under subsections (B)(1)through (B)(5), (B)(10) and (B)(11) of this Section.

**R20-5-1213. Findings and Order Issued by the Department**

- A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the Act, the Department shall issue a Findings and Order of its determination. The Department shall ~~send~~ serve its Findings and Order to both the employer and the complainant, ~~at their last known addresses served personally or by regular first class mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees. Service may be made and is deemed complete by either depositing the document in regular or certified mail, addressed to the party served at the address shown in the records of the Department, by personal delivery upon the party, or with a party's consent, transmission by e-mail to the email address shown in the records of the Department.~~
- B. If the Department determines that an employer has violated the minimum wage, earned paid sick time, or equivalent paid time off requirements, the Department shall order the employer to pay the employee, and if applicable, affected employees, the balance of the wages, earned paid sick time, or equivalent paid time off owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages, earned paid sick time, or equivalent paid time off owed.
- C. If the Department determines that a retaliation, discrimination, confidentiality, or nondisclosure violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, including:
1. Rehiring or reinstatement,
  2. Reimbursement of lost wages and interest,
  3. Payment of penalty to employees or affected employees as provided for in the Act and this Article, and
  4. Posting of notices to employees.
- D. If the Department determines that no violation of the Act has occurred, or if the Department is unable to reach a conclusion based on the evidence submitted, the Department shall notify the parties and shall dismiss the complaint without prejudice. After notification of the Department's determination, the complainant may bring a civil action under A.R.S. § 23- 364(E).

- E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or the civil penalties and other violations may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall serve, personally or by regular first class mail, the Findings and Order on the employer and, if a complaint has been filed, the complainant.
- F. The Director of the Department shall sign the written Findings and Order issued by the Department.
- G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

2023 FEB -9 AM 10:01

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

FILED

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK TIME PRACTICE AND PROCEDURE**

**1. Identification of the proposed rulemaking:**

The proposed amendments (1) clarify the rules by including a new definitions, (2) ease the regulatory burden of recordkeeping with respect to specific employees that are under contract and granted benefits that exceed those contained in A.R.S. § 23-376, (3) ease the regulatory burden of recordkeeping by eliminating unnecessary employer records, and (4) modernize the rules by allowing for service by electronic mail with a party's consent.

**2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:**

Employers, as defined in A.R.S. §§ 23-362 and 23-371 are covered by the rules within Article 12. Because of the added clarity, salaried employees and employers of salaried employees benefit from the new definition in R20-5-1202. All employers benefit from the record keeping changes in R20-5-1210, additionally employers and employees of minor league baseball benefit from the changes in R20-5-1210. Lastly, employers and employees benefit from the changes in R20-5-1213.

**3. A cost benefit analysis of the following:**

- a. Costs and benefits to state agencies directly affected by the rulemaking, including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Commission does not anticipate an increase in costs from the new rulemaking. The Commission will not need to hire additional staff to enforce the new rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Political subdivisions would enjoy the same benefits as outlined below to businesses affected by the proposed amendments.

- c. Costs and benefits to businesses directly affected by the rulemaking:

The Industrial Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. The proposed rulemaking is intended to reduce regulatory burden by clarify salaried employers and eliminating burdensome and unnecessary record keeping requirements, and modernizing the service of Findings and Orders issued by te Department by allowing electronic service with consent.

4. **Impact on private and public employment in businesses, agencies and political subdivisions:**

There is no anticipated impact on private and public employment in businesses, agencies and political subdivisions.

5. **Impact on small businesses:**

a. **Identification of the small businesses subject to the rulemaking:**

Arizona small businesses who are employers, as defined in A.R.S. §§ 23-362 and 23-371 will be directly affected by the proposed rulemaking.

b. **Administrative and other costs required for compliance with the rulemaking:**

The proposed rules do not place new obligations, costs, or time constraints on employers, adoption of the final rules is not expected to impose administrative or other costs required for compliance in Arizona.

c. **Description of the methods that may be used to reduce the impact on small businesses:**

The Commission did not consider methods of reducing the impact on small businesses.

d. **Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:**

Consumers are not directly affected by this rulemaking. Private persons who file an earned paid sick time or minimum wage claim benefit from the changes in R20-5-1213.

6. **Probable effect on state revenues:**

The Commission anticipates state revenues remaining neutral.

7. **Less intrusive or less costly alternative methods considered:**

The Commission did not consider alternative methods.

**8. Data on which the rule is based:**

The Commission did not perform any studies as a basis for the rulemaking.