Senate Engrossed House Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 129

HOUSE BILL 2474

AN ACT

AMENDING SECTIONS 23-392, 23-901 AND 41-794, ARIZONA REVISED STATUTES; RELATING TO PUBLIC EMPLOYEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 23-392, Arizona Revised Statutes, is amended to read:

23-392. Overtime compensation for certain law enforcement or probation officer activities; option; definitions

A. Any person engaged in law enforcement activities shall be compensated for each hour worked in excess of forty hours in one work week at the option of such employer at the following rates:

1. One and one-half times the regular rate at which such person is employed or one and one-half hours of compensatory time off for each hour worked if by the person's job classification overtime compensation is mandated by federal law.

2. If by the person's job classification federal law does not mandate overtime compensation, the person shall receive the regular rate of pay or compensatory leave on an hour for hour basis.

B. Any person engaged in probation officer activities shall be compensated for each hour worked in excess of eighty hours in a two week work period at the option of such employer at the following rates:

1. One and one-half times the regular rate at which such person is employed or one and one-half hours of compensatory time off for each hour worked if by the person's job classification overtime compensation is mandated by federal law.

2. If by the person's job classification federal law does not mandate overtime compensation, the person shall receive the regular rate of pay or compensatory leave on an hour for hour basis.

C. Paid leave may be considered hours worked for the purpose of calculating overtime.

D. The director of the department of public safety may establish alternate work periods, in accordance with federal law, for the purpose of determining overtime compensation for those employees of the air rescue section of the department of public safety.

E. Notwithstanding subsection C of this section, an alternate work period established by the director of the department of public safety for the purpose of determining overtime compensation shall not exceed twenty-eight days or one hundred sixty hours.

F. For the purposes of this section:

1. "Person engaged in law enforcement activities":

(a) Means:

(i) A law enforcement officer as defined by section 38-1001.

(ii) A peace officer as defined by section 41-1701.

(iii) Any security personnel responsible for controlling or maintaining custody of inmates in correctional institutions maintained by this state or a county, city or town.

(iv) A CAPITOL POLICE OFFICER EMPLOYED PURSUANT TO SECTION 41-794, SUBSECTION A.

(b) Does not include any such person employed in a bona fide executive or administrative capacity as defined by the employer.

2. "Person engaged in probation officer activities":

(a) Means a probation officer or surveillance officer who is appointed pursuant to section 8-203, 12-251 or 12-259.

(b) Does not include any such person employed in a bona fide executive or administrative capacity as defined by the employer.

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 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 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. Any dividend which the department's vocational rehabilitation program may be entitled to receive from the state compensation fund because of a favorable loss experience for any policy period shall not revert to the state general fund but shall be applied to the department's current premium obligations for workers' compensation coverage for such program.

(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 which 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 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 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 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 state of Arizona under competent military orders or upon order of the governor.

Compensation benefits shall be based upon 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 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 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.

Sec. 3. Section 41-794, Arizona Revised Statutes, is amended to read:

41-794. <u>Employment of police personnel; capitol police reserve</u>

A. The department shall employ police officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall as described by section 41-1362 and state office buildings in Tucson and persons who are on those properties.

B. The director may provide for a volunteer organization to be known as the capitol police reserve. This organization shall consist of United States citizens who are residents of this state and who render auxiliary support, without compensation, to the department as the director prescribes. This organization may consist of volunteers who are peace officers and volunteers who are not peace officers. The volunteers who are not peace officers shall be United States citizens, United States naturalized citizens or persons lawfully admitted to the United States for permanent residence as defined under federal law.

C. The director shall define the powers and duties of the reserve, but these powers and duties shall not be in excess of those accorded to department employees or inconsistent with those powers and duties.

D. The director shall issue to each member of the reserve a badge of authority to be used by the members of the reserve for activities authorized by the director. The badge shall be of such design as the director determines, but shall bear the word "reserve" across the face of the badge and shall distinguish between volunteers who are certified peace officers and volunteers who are not certified peace officers.

E. A member of the reserve performing activities authorized by the director for an employer is not a state employee for any purpose, including workers' compensation benefits ~~under subsection F~~. An entity employing a reserve officer to perform activities authorized by the director shall file a statement with the department that the employee is the agent of the employer and not an employee of this state.

~~F. While on duty, members of the reserve are deemed state employees for the purpose of securing workers' compensation benefits in the same manner, under the same conditions and to the same extent as regular state employees.~~

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.