

## ARIZONA

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### 1. Citation for the state’s workers’ compensation statute.

Arizona Revised Statutes (hereafter A.R.S.) Annotated §§ 23-901, *et seq.*

Note: Arizona’s Employer Liability Law for hazardous occupations is excluded from the herein analysis.

## SCOPE OF COMPENSABILITY

### 2. Who are covered “employees” for purposes of workers’ compensation?

With the exception of certain specifically exempted persons, essentially every person in the service of the state, any political subdivision thereof, or any person, (including an alien, or minor legally or illegally permitted to work for hire) in the service of any employer subject to the workers’ compensation provisions, is considered to be an employee. Any person employed as a casual employee or not in the usual course of a trade is not considered an employee. Independent contractors are not employees. A.R.S. § 23-901. Recent amendment to the statute clarified that working members of limited liability companies and working shareholders of corporations are covered employees if they hold/own less than 50% beneficial/membership interest in the LLC/corporation. Working members/shareholders holding/owning more than 50% may be covered employees on written acceptance, by endorsement, or an application for coverage at the discretion of the insurance carrier for the LLC/corporation. A.R.S. §23-901(q),(r),(s),(t).

### 3. Identify and describe any “statutory employer” provision.

When an employer procures a contractor to perform work which is part of the employer’s business and the employer retains supervision or control over the work, the contractor and those employed by the contractor are considered employees of the original employer. A.R.S. § 23-902.

4. What types of injuries are covered and what is the standard of proof for each:

A. Traumatic or “single occurrence” claims

Injuries suffered by an accident arising out of and in the course of one’s employment are covered. A.R.S. § 23-1021. An injury occurs when there is some objective physical damage, a systematic aggravation of a pre-existing problem, or one that has occurred over a period of time. With the exception of certain presumptions, the employee must prove the elements of the claim by a preponderance of the evidence.

There are special statutory provisions related to heart and mental injuries, hernias, AIDS, Hepatitis C, Methicillin-resistant staphylococcus aureus, spinal meningitis, and tuberculosis. A.R.S. §§ 23-1043 through 23-1043.04.

B. Occupational disease (including respiratory and repetitive use).

Any disease which is an expected consequence in a particular industry and which may occur as the result of exposure over an indefinite period of time can be classified as an occupational disease. Several statutory factors determine whether the disease is sufficiently related to the occupation and employment. Existence of an occupational disease requires proof by a preponderance of the evidence. There are specific provisions which, subject to stated requirements, may create a presumption of occupational disease for firefighters and peace officers. A.R.S. § 23-901.01.

5. What, if any, injuries or claims are excluded?

Claims which the employee cannot prove by a preponderance of the evidence are excluded. A.R.S. § 23-1021(A). Also, purposely self-inflicted injuries, injuries caused by the willful misconduct of an employer or employee, or those caused or continued by an unreasonable refusal to follow competent surgical treatment or medical assistance are excluded. A.R.S. §§ 23-901.04, 23-1021, 23-1022 (A), 23-1027.

6. What psychiatric claims or treatments are compensable?

Where there is physical trauma resulting in mental injury, the employee must prove that a work-related injury was a substantial cause of the mental injury. Where a mental stimulus causes a

mental injury, the employee must prove the mental injury arose from an unusual, unexpected or extraordinary work-related event. A third situation that is covered is where there is a mental stimulus resulting in a physical injury (i.e., an ulcer). A.R.S. § 23-1043.01(B).

**7. What are the applicable statutes of limitations?**

A claim must be filed within 1 year after the injury becomes manifest or the employee knows or should know that there is a compensable injury. The statute of limitations can be waived by failure to raise it in a timely manner. The statute may be tolled where: (1) the employee is insane, incompetent or incapacitated when the injury occurs; (2) an employer/insured pays compensation; or (3) the employee justifiably relies on a material representation by the employer/insurer. A.R.S. § 23-1061(A)(B).

A claim for temporary partial disability benefits must be filed (1) within two years after an employee knew or should have known that the carrier, self-insured employer or special fund denied or improperly paid compensation, or (2) within two years after the date on which an award for benefits encompassing the entitlement period becomes final. No accrual date exists prior to the 2008 enactment date of this limitation. A.R.S. § 23-1061 (J).

**8. What are the reporting and notice requirements for those alleging an injury?**

There is no specified period of time; an employee must “forthwith” report an accident/injury to the employer. A.R.S. § 23-908 (E). The employee must not delay receiving treatment or prejudice the employer’s ability to investigate the incident. After notifying the employer, the employee must file a claim with the Industrial Commission. A.R.S. § 23-1061(A).

**9. Describe available defenses based on employee conduct:**

**A. Self-inflicted injury**

Any injury which is purposely self-inflicted is excluded, but this defense is narrowly construed to preclude recovery only when the act and consequences are intended. A.R.S. § 23-1021.

**B. Willful misconduct, “horseplay,” etc.**

The employer must prove that the employee's act was a substantial deviation from authorized activities (i.e., was outside the course and scope of employment). Courts examine the extent and seriousness of the deviation, the extent to which the deviation has become accepted, and the extent to which the nature of the employment may be expected to include such activity. *Jaimes v. Industrial Commission*, 163 Ariz. 307, 787 P.2d 1103 (Ariz. App. 1990).

### **C. Injuries Involving Drugs and/or alcohol**

Intoxication does not constitute a separate statutory defense, and does not bar recovery unless it renders the employee unable to continue in the course of employment. *Producer's Cotton Oil v. Industrial Commission*, 171 Ariz. 24, 827 P.2d 485 (Ariz. App. 1992).

#### **10. What, if any, penalties or remedies are available in claims involving fraud?**

Any person committing fraud to obtain a benefit for him/herself or another is guilty of a class 6 felony, and an employee convicted of this offense loses all right to compensation. A.R.S. § 23-1028.

#### **11. Is there any defense for falsification of employment records regarding medical history?**

Only for claims for occupational disease, where compensation may be denied for willful self-exposure, including a failure by the employee to truthfully answer an inquiry by the employer as to previous injuries, disabilities, or other health matters. A.R.S. § 23-901.04.

#### **12. Are injuries during recreational and other non-work activities paid for or supported by the employer compensable?**

An injury is usually deemed to be in the course of employment if it takes place on the employer's premises. However, if the activity takes place off the premises, several factors are considered, including: (1) when the activity takes place; (2) whether participation is compelled; (3) whether the employer sponsors the activity; and (4) whether the employer benefits from the employee's participation. A.R.S. § 23-1021.

**13. Are injuries by co-employees compensable?**

Yes, if the injury is caused by a co-employee acting within the scope of his/her employment, the compensation remedy is exclusive. But if the injury is the result of the co-employee's willful misconduct or the co-employee was far removed from the scope of employment at the time of the injury, the employee may elect to accept worker's compensation coverage or to sue the co-employee. A.R.S. § 23-1022.

**14. Are acts by third parties unrelated to work, but committed on the premises, compensable (e.g. "irate paramour" claims)?**

Yes, as long as the injury arises from an accident during the course of employment. A.R.S. §§ 23-1021-1024.

## BENEFITS

**15. What criterion is used for calculating the average weekly wage?**

Wages are calculated on a monthly basis using the employee's average monthly wage at the time of the injury. Typically, the reference for establishing average monthly wage is the employee's wages for the previous thirty days. If the employee did not work thirty continuous days prior to injury or death, the employee's partial wages shall be compared with those of comparable workers. If the employee is working under contract, the guaranteed wage set in the contract shall be paid, but no less than wages paid to employees not under contract for similar work. A.R.S. § 23-1041. A special calculus is applied for covered working members of limited liability companies owning over 50% membership interest in an LLC, and covered working shareholders of corporations owning over 50% beneficial interest in a corporation. A.R.S. §23-901(r),(t).

**16. How is the rate for temporary/lost time benefits calculated, including minimum and maximum rates?**

For temporary total disability, 66 and 2/3 percent of the employee's average monthly wage (plus \$25 a month for dependents). A.R.S. § 23-1045. For temporary partial disability, 66 and 2/3 percent of the difference between the average monthly wage and the wage he/she is able to earn thereafter. A.R.S. § 23-1044. There is no minimum, but there is a maximum of \$3000 for employees injured from/after December 31, 2007 but before January 1, 2009 and a maximum of

\$3600 for employees injured from/after December 31, 2008 but before January 1, 2010. A.R.S. §23-1041(D)(6) and (7). The Industrial Commission now meets each year and adopts an adjusted maximum rate to reflect the annual percentage increase in the Arizona mean wage published by the Arizona Department of Economic Security using Bureau of Labor statistics occupational statistics data coded for all occupations for the prior calendar year. The commission shall not decrease the rate or increase the rate more than 5% from the prior year. A.R.S. § 23-1041 (E).

17. **How long does the employee/insurer have to begin temporary benefits from the date disability begins?**

21 days after notification by the Industrial Commission to the carrier of the filing of a claim except where the right to compensation is denied. A.R.S. § 23-1062(B).

18. **What is the “waiting” or “retroactive” period for temporary benefits (e.g. must be out \_\_\_ days before recovering benefits for the first \_\_\_ days)?**

An employee must be out 15 days before receiving benefits for the first 7 days. A.R.S. § 23-1062(B).

19. **What is the standard/procedure for terminating temporary benefits?**

Temporary disability benefits are terminated when the employee is able to return to suitable work and is cleared to do so by the attending physician.

20. **Is the amount of temporary total disability paid credited toward the amount entitled for permanent partial disability?**

Only when the employee receives permanent partial disability benefits through a lump sum (or settlement). *Time, D.C. Freight Lines v. Industrial Commission*, 148 Ariz. 117, 713 P.2d 318 (Ariz. App. 1985).

21. **What disfigurement benefits are available and how are they calculated?**

Facial disfigurement is compensable when scarring causes an observable marring or impairment

to the natural appearance of the employee. While a reduction in earning capacity need not be demonstrated, it may be considered. The commission may base the compensation paid upon what it believes just given the proof submitted. A.R.S. §§ 23-1044(B)(22), 23-1047.

**22. How are the permanent partial disability benefits calculated, including the minimum and maximum rates?**

These are allowed to the extent an employee suffers a loss of earning capacity. For certain enumerated disabilities the employee is entitled to 55% of his/her average monthly wage. A.R.S. § 23-1044(B). For those not enumerated, the employee is entitled to receive compensation equal to 55% of the difference between the pre-injury average monthly wage and the current wage. A.R.S. § 23-1044(C). There is no minimum, but there is a maximum of \$3000 for employees injured from/after December 31, 2007 but before January 1, 2009 and a maximum of \$3600 for employees injured from/after December 31, 2008 but before January 1, 2010. A.R.S. § 23-1041(D)(6) and (7). The Industrial Commission now meets each year and adopts an adjusted maximum rate to reflect the annual percentage increase in the Arizona mean wage published by the Arizona Department of Economic Security using Bureau of Labor statistics occupational statistics data coded for all occupations for the prior calendar year. The commission shall not decrease the rate or increase the rate more than 5% from the prior year. A.R.S. § 23-1041 (E).

**A. How many weeks are available for scheduled members/parts, and the standard for recovery?**

The schedule ranges from 1 ¼ months for loss of the first phalange of any toe to 60 months for permanent and complete loss of hearing in both ears. There is a conclusive presumption that scheduled injuries result in the loss of earning capacity. Awards may be commuted to a lump sum of up to \$25,000 for scheduled injuries with or without the consent of the carrier liable for the commutation. A.R.S. §§ 23-1044(B), 23-1067(A).

**B. Number of weeks for “whole person” and standard for recover?**

All other injuries are determined by earning capacity. Any such injuries may be commuted to a lump sum of \$150,000 for requests made from and after June 30, 1987 with the consent of the carrier liable to pay the claim. Recovery is determined by the ability to return to suitable employment at the pre-injury earning capacity level. A.R.S. § 23-1067 (B).

**23. Are there any requirements/benefits for vocation rehabilitation, and what is the standard for recovery?**

Such benefits are not required, but the Industrial Commission has a fund which may cover such services. The cost is borne entirely by the Commission, and cease when the employee is able to engage in suitable employment. A.R.S. § 23-1065.

**24. How are permanent total disability benefits calculated, including the minimum and maximum rates?**

An employee suffering from a total loss of earning capacity is entitled to 66 and 2/3 percent of the average monthly wage, determined as described in (16.) above.. A.R.S. §§ 23-1045, 23-1041(D)(5).

**25. How are death benefits calculated, including the minimum and maximum rates:**

**A. Funeral Expenses**

Reasonable expenses up to \$5000. A.R.S. § 23-1046(A)(1).

**B. Dependency claims**

The surviving spouse is entitled to a monthly benefit of 66 and 2/3 percent of the average monthly wage of the deceased and a lump sum payment of two years' wages if he/she remarries. If the surviving spouse has children, the monthly benefit is 35% of the average monthly wage of the deceased and upon remarriage the lump sum payment, while the surviving children receive 31 and 2/3 percent of the average monthly wage to be divided among the children equally. If no spouse survives, a single surviving child receives 66 2/3% of the average monthly wage but if there is more than one child then the 66 and 2/3 percent limit is divided among the surviving children. A.R.S. § 23-1046 (A)(2) and (3).

If there is no surviving spouse or child, a surviving dependent parent receives 25% plus 15% if both are dependent. A.R.S. § 23-1046(A)(4). Dependent brothers or sisters may recover if there are no surviving dependent parents (25% for one, 35% for more than one). However, surviving parents or siblings must prove they were wholly dependent on the employee for support at the time of



the employee's death. A.R.S. § 23-1046(A)(5)(a)(b).

**26. What is the criteria for establishing a "second injury" fund recovery?**

The Special Fund may reimburse the employer/insurer in an amount equal to one-half of yearly permanent disability benefits, when an employee sustains a scheduled injury that becomes unscheduled because of a previous work-related scheduled injury. Also, the same benefit is available where the employee suffered from a 10% or more nonindustrial physical impairment that constituted a hindrance to employment, so long as the pre-existing impairment is one of the listed impairments. A.R.S. § 23-1065.

**27. What are the provisions for re-opening a claim for worsening of condition, including applicable limitations periods?**

Re-opening is permitted, and there is no statute of limitations. To re-open a claim, the employee must file a petition to re-open and generally must submit medical evidence which establishes to a reasonable medical probability that the industrial injury caused or contributed to a new, additional or previously undiscovered condition. In other words, the industrial injury must be a producing cause of the condition for which re-opening is sought. A claim shall not be re-opened if compensation was previously denied by Notice of Claim Status filing or determination by the commission and the notice or determination was allowed to become final and no exception applies under A.R.S. § 23-947 excusing a late filing to request a hearing. A claim shall not be re-opened because of increase subjective pain if the pain is not accompanied by a change in objective physical findings. A claim shall not be re-opened solely for additional diagnostic or investigative tests, but reasonable tests, if shown to be causally related to the injury, will be charged to the employer. The employer has 21 days after the petition is filed to accept or deny the petition. A.R.S. §§ 23-1061(H) and (I).

**28. What situation would place responsibility on the employer to pay an employee's attorney fees?**

While regulations suggest that attorney's fees and costs may be awarded as a sanction, it is not clear if the Industrial Commission has authority to order such penalties. Sanctions and attorneys' fees may also be awarded against the employer/insurer or counsel on appeal if the claim is found to be frivolous. Such fees are rarely awarded.

## EXCLUSIVITY/TORT IMMUNITY

### 29. Is the compensation remedy exclusive?

#### A. Scope of Immunity

So long as the employee has not elected to forego worker's compensation coverage before the injury, worker's compensation is the exclusive remedy. The immunity is only to the employer and co-employees, not third parties. A.R.S. § 23-1022. The employer may be deemed to have waived the exclusive remedy if it does not purchase worker's compensation insurance or furnish to the Industrial Commission of Arizona satisfactory proof of financial ability to pay compensation directly or through a pool approved by the Commission. A.R.S. § 23-907, A.R.S. § 23-961, A.R.S. § 23-962. In such instance, the employee may accept compensation paid through a special fund, which payments are charged against the employer, or the employee may file a civil suit against the employer, in which suit the employer is prohibited from asserting the defenses of assumption of the risk and contributory negligence. In such action, proof of the injury constitutes prima facie evidence of negligence and the employer bears the burden to show freedom from negligence resulting in the injury. A.R.S. § 23-907. Either choice, however, is exclusive. If the employee accepts worker's compensation benefits, the employee cannot file a civil suit.

#### B. Exceptions (intentional acts, contractual waiver, "dual capacity", etc.)

As noted above, the employee can waive worker's compensation coverage. Also, the employee can be deemed to be an independent contractor or fall into the class of persons for whom coverage does not exist by statute. One exception to the exclusivity provision is for willful or intentional injuries by the employer or a co-employee. However, this exception has very rarely been found. The dual capacity doctrine has been mentioned by the Arizona courts, but never favorably applied on behalf of an employee. A.R.S. §§ 23-901, 23-1022, 23-1023.

### 30. Are there any penalties against the employer for unsafe working conditions?

No. However, see the Arizona Occupational Health and Safety Act of 1972 for information regarding an employer's duty to furnish a safe working environment for employees.

**31. What is the penalty, if any, for an injured minor?**

None. However see A.R.S. § 23-905(B) concerning minors who work at an age and an occupation not legally permitted. In that event, the injured minor may receive additional compensation in an amount equal to fifty percent of the compensation the injured minor would otherwise receive pursuant to the statute. If an insurance carrier is required to pay additional compensation pursuant to the statute, the insurance carrier shall be subrogated and entitled to recover any such amounts paid from the employer.

**32. What is the potential exposure for “bad faith” or claims handling?**

When the employer/insurer fails to give notice of the claim status as required, it can be required to pay benefits immediately from the date it was notified of the claim. Furthermore, an employee may be entitled to interest at the legal rate when his or her compensation payments are not timely made as required. The employee/insurer may also be found to have engaged in bad faith or unfair claim processing practices and this determination is made exclusively by the Industrial Commission. When an infraction has been determined, the employee may be awarded a penalty of 25% of the benefit amount or \$500, whichever is greater. If the employee is found to have a history of such practices, the Commission may impose a civil penalty of up to \$1000 for each violation payable to the Commission’s Special Fund.

The standard for bad faith is when the employer/insurer: (1) institutes a proceeding or defense that is not well grounded in fact or law; (2) unreasonably delays payment of benefits or authorization for medical benefits; (3) unreasonably underpays benefits; (4) unreasonably terminates benefits; (5) intentionally misleads an employee as to benefits or remedies available; or (6) unreasonably interferes with or obstructs the employee’s right to choose attending physicians. The standard for an unfair claim is when an employer/insurer: (1) unreasonably issues a notice of claim status without adequately supporting information; (2) fails to acknowledge and act reasonably and promptly upon communication from the Commission, the employee or employee’s attorney; (3) directly advises the employee not to consult with or obtain the services of an attorney; or (4) communicates directly with an employee represented by an attorney for an improper purpose. There are also potential criminal sanctions for any of several acts of the employer/insurer. A.R.S. §§ 23-930 and 23-932. While the bad faith remedy for the claim of injury is exclusive to the worker’s compensation system, Arizona recognizes a civil cause of action for bad faith and breach of conduct for injuries which are separate and distinct from the original injury and can only be attributed to the employer’s or its insurance carrier’s bad faith. Examples of such actions are for mental distress, *Franks v. United States Fidelity & Guaranty Co.*, 149 Ariz. 291, 295, 718 P.2d 193, 197 (1984) and for breach of a contract to pay the difference between benefits awarded by the Industrial Commission and the contracted salary of an employee. *Stoecker v. Brush*

*Wellman, Inc.* 194 Ariz. 448, 984 P.2d 534 (1999). Punitive damages are available in a bad faith civil action.

**33. What is the exposure for terminating an employee who has been injured?**

None.

## THIRD PARTY ACTIONS

**34. Can third parties be sued by the employee?**

Yes, however, any recovery in tort may be required to be used to satisfy medical liens associated with the worker's compensation coverage. A.R.S. § 23-1023.

**35. Can co-employees be sued for work-related activities?**

No, they are immune from liability as long as the employee did not forego worker's compensation coverage and as long as the co-employee did not commit willful misconduct. A.R.S. § 23-1022. Also, while Arizona's statute of limitations for personal injury tort actions is two years, A.R.S. § 12-542, a third-party action is controlled by the employee for only the first year. If suit is not filed within one year, control of the third-party claim reverts to the worker's compensation carrier to recover damages at its discretion. However, the employee can request and obtain a reassignment of the claim from the carrier in the second year to pursue a third party claim. A.R.S. § 23-1023.

**36. Is subrogation available?**

Yes, in the form of granting the payor of compensation a lien on a third party recovery to the extent of all compensation and medical benefits rendered, and a credit which acts like a deductible for future compensation liability. A.R.S. § 23-1023.

## MEDICALS

**37. Is there a time limit for medical bills to be paid, and are penalties available for late payment?**

The Industrial Commission's Rules of Procedure exempt the employee for any responsibility for amounts due the medical provider, including disputed amounts. To the extent an employee could be subject to liability for a medical bill, such as a pharmacy bill, there is no specified time period in which this charge must be paid, but the employer/insurer can be found to have acted in bad faith for "unreasonably delaying" payment of benefits. Benefits must be paid promptly. A.R.S. § 23-930.

**38. What, if any, mechanisms are available to compel the production of medical information (reports and/or an authorization) at the administrative level)?**

Hospital records or authorization obtained by any physician or surgeon are not considered a privileged communication if such information is requested by an interested party for a proper understanding of the case and a determination of the rights involved. Medical information unrelated to the pending industrial claim remains privileged. A.R.S. § 23-908(D).

**39. What is the rule on choice (a) claimant's choice of physician; (b) employer's right to a second opinion and/or Independent Medical Examination?**

**A. Claimant's choice of physician.**

This depends on whether the employer has elected to provide medical services directly to its employees, subject to the Industrial Commission's approval. If the employer provides such services, then the employee must accept the services unless the employee can demonstrate that their health, life or recovery is endangered or impaired by those services. The employee must then make application to the Industrial Commission to change doctors. If the employer does not provide such services, the employee is free to choose a physician. Furthermore, the employee can change physicians upon written permission of the attending physician, employer/insurer, or Industrial Commission. A.R.S. §§ 23-1070, 23-1071(B).

**B. Employer's right to a second opinion and/or Independent Medical Examination.**

An employer is entitled to have an employee, who may be eligible for benefits for worker's compensation, submit him or herself to an independent medical examination upon request of the Industrial Commission, state compensation fund, employer/insurer. If an employee refuses to submit to the examination, his or her right to compensation will be suspended until the examination is made. A.R.S. § 23-1026.

**40. What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?**

The employee is entitled to coverage for medical services reasonably required as a result of the injury. Reasonable necessity of care is a medical question. Furthermore, services may provided by physicians or other licensed practitioners of the healing arts, which has been construed to include chiropractors and even spiritual healers if certain requirements are met. *Capital Foundry v. Industrial Commission*, 117 Ariz. 37, 570 P.2d 808 (Ariz. App. 1977), A.R.S. § 23-1062(A).

**41. What prosthetic devices are covered, and for how long?**

Any prosthetic device reasonably required as a result of the injury is covered, without a time limit. A.R.S. § 23-1062(A).

**42. Are vehicle and/or home modifications covered as medical expenses?**

Yes, so long as they are reasonably necessary as a result of the injury and the employer was given notice of the injury. *Terry Grantham v. Industrial Commission*. 154 Ariz. 180, 741 P.2d 313 (Ariz. App. 1987). *But see also Ball Mfg. v. Industrial Commission of Arizona*, 171 Ariz. 26, 827 P. 2d 487 (Ariz. App. 1992).

**43. Is there a medical guide or schedule, or other provisions for cost containment?**

Yes, the Industrial Commission has set a fee schedule, reviewed annually, limiting fees which may be charged by physicians treating industrial injuries. A.R.S. § 23-908(B).

**44. What, if any, provisions or requirements are there for "managed care"?**

None.

## PRACTICE/PROCEDURE

### 45. What is the procedure for contesting all or part of a claim?

When notice is first submitted, the employer/insurer may deny a claim by stating it is disputed. The employer or its insurance carrier has 21 days to accept or deny a claim from the day it is filed. If the employer or carrier files no response within 21 days, the claim is deemed accepted. If the claim is denied, the employee may invoke the hearing procedures administered by the Industrial Commission. Likewise, if the claim is accepted and the employee contests the employer/insurer's determination and award, the hearing procedures may be invoked. The employer/insurer does not need to formally contest claims, since it makes the initial award determinations. A.R.S. § 23-1061.

### 46. What is the method of claim adjudication?

#### A. Administrative level.

The employee/insurer first makes a benefit determination and, if the employee disagrees, he or she may contest this determination before the Industrial Commission. Administrative law judges from the Industrial Commission conduct evidentiary hearings concerning contested cases, subject to general principles of justice and due process. Formal rules of evidence and procedure need not be strictly followed. Discovery, such as interrogatories, depositions and independent medical examinations, is permitted. A.R.S. §§ 23-941 *et seq.*

#### B. Trial court

Contested worker's compensation cases are appealed to the Court of Appeals. The Industrial Commission therefore serves as the trial court. A.R.S. § 23-951.

#### C. Appellate

Judicial review is obtained by a Petition for Special Action to the Court of Appeals. The action of the Court of Appeals may be further appealed by a Petition for Review to the Arizona Supreme Court. *Safeway Stores v. Industrial Commission*, 152 Ariz. 42, 730 P.2d 219 (Ariz. 1986); Procedures Manual, Industrial Commission of Arizona.

**47. What are the requirements for stipulations or settlements?**

Arizona recognizes compromise and settlement agreements. There must be a genuine dispute as to compensation, the applicant must read and understand the terms of the compromise and settlement agreement, and there must not be any coercion, duress, fraud, misrepresentations or undisclosed additional agreements used in achieving the settlement. A.R.S. §23-941.01, *Safeway Stores v. Industrial Commission*, 152 Ariz. 42, 730 P.2d 219 (Ariz. 1986); Procedures Manual, Industrial Commission of Arizona.

**48. Are full and final settlements with closed medicals available?**

Yes, such a settlement may provide for finality or issue preclusion and may be enforceable to prevent the employee from seeking additional medical costs for that condition in the future. The agreement must be explicit as to the issue involving compensability or causal relationship of a particular medical condition, otherwise future medical benefits may be awarded in a subsequent re-opening of the claim. Procedures Manual, Industrial Commission of Arizona. See A.R.S. § 23-941.01 for specific requirements for approval of a full and final settlement.

**49. Must stipulations and/or settlements be approved by the state administrative body?**

Yes, they must be submitted to the Industrial Commission and approved by an administrative law judge as under question 46. If the judge rejects the agreement, the parties may appeal to the Court of Appeals. A.R.S. §23-941.01, Procedures Manual, Industrial Commission of Arizona.

## RISK FINANCE FOR WORKERS' COMPENSATION

**50. What insurance is required; and what is available (e.g. private carriers, state Fund, assigned risk pool, etc.)?**

The employer must provide worker's compensation coverage either through insurance or by meeting the requirements for self-insurance. Several private insurers provide worker's compensation coverage. Note that a multi-state employer may be required to provide worker's compensation coverage in Arizona if its employees may be found there. A.R.S. § 23-961.



**51. What are the provisions/requirements for self-insurance?**

**A. For individual entities.**

An employer seeking to be self-insured must provide to the Industrial Commission satisfactory proof of financial ability to pay compensation. The Industrial Commission may require a deposit or other security from the employer in any amount fixed by the Commission, but not less than \$100,000. Self-insured employers, like insurers, must annually pay to the treasurer for the benefit of the administrative fund a 3% amount, of at least \$250, of what would have been paid had the employee been fully insured. A.R.S. § 23-961.

**B. For groups or “pools” or private entities.**

Two or more employers, each of whom are engaged in similar industries, may enter into contracts to establish a workers' compensation pool to provide for the payment and administration of workers' compensation claims pursuant to the statute. The members of the pool must elect a board of trustees and each member employer must have been in business for at least five consecutive years before entering into the pool. The total amount of gross premiums paid by pool members in the year preceding execution of the contract must equal at least \$750,000. A.R.S. § 23-961.01. (A) Worker's compensation pools established pursuant to this statute are exempt from taxation under title 43-101 et. seq. A.R.S. § 23-961.01(C)

**52. Are ‘illegal aliens’ entitled to benefits of workers’ compensation as The Immigration Control Act indicates that they cannot be employees although most state acts include them within the definition of ‘employee’?”**

No Arizona or Federal court has considered this issue as it applies to A.R.S. § 23-901(6)(b), which does include “aliens... legally or illegally permitted to work for hire.” However, *N.L.R.B. v. Kolkka* allows ‘illegal aliens’ to vote in union elections despite the exclusion under the Immigration Control Act. 170 F.3d 937 (9<sup>th</sup> Cir. 1999). It should be noted that Arizona voters passed Proposition 200 which denies “illegal aliens” the right to some state sponsored benefits. An attorney general opinion limited the scope of the act to several distinct programs. 2004 Az.Op.Atty.Gen. No. 104-010. At this time, no court opinion excludes payment to “illegal aliens” and the Industrial Commission continues to award benefits to “illegal aliens.”

**53. Are terrorist acts or injuries covered or excluded under workers' compensation law?**

A terrorist act would be subject to the same principles applicable to injuries by other third parties. See answer 14.

**54. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to satisfy Medicare's interests pursuant to the Medicare Secondary Payer Act?**

No.

**55. How are subrogation liens of Medicaid and health insurers treated under workers= compensation law??**

The Federal Medicaid statute requires States to include in their plan for medical assistance provisions (1) that the individual will assign to the State any rights to payment for medical care from any third party and (2) that the individual will cooperate with the State in pursuing any third party who may be liable to pay for care and services available under the Medicaid plan. 42 U.S.C.A. § 1396k(a). The State is authorized to retain such amount as is necessary to reimburse it (and the Federal Government as appropriate) for medical assistance payments and to pay the remainder to the individual. 42 U.S.C.A. § 1396k(b).

**56. What are the requirements for confidentiality and privacy of medical records under workers' compensation law and how are they affected by state and federal law (HIPAA)?**

HIPAA regulations provide an exception for workers= compensation claims so as to allow the collection of medical records by employers and insurers. 45 C.F.R. 164.512(l). Therefore, the standard practice of obtaining medical records could proceed under state law.

**57. What are the provisions for "Independent Contractors"?**

A.R.S. § 23-902(c) defines Independent Contractors and excludes them from coverage. The definition is one who "while so engaged is independent of that business in the execution of the work and not subject to the rule or control of the business for which the work is done, but is engaged only in the performance of a definite job or piece of work, and is subordinate to that business only in effecting a result in accordance with that business design." A.R.S. § 23-902(d)

provides a basis for which a business that uses the services of an Independent Contractor may prove the existence of an Independent Contractor relationship, prescribing a written agreement with several specific terms of engagement. A.R.S. § 23-902(f) provides that said agreement may be found null and void if the agreement is obtained through deception, coercion or duress.

No other statutory provision exists, though case law further defines “control” and has created the “right to control” doctrine to further define whether a worker is an Independent Contractor. The Courts give several indicia of control, none of which are conclusive and must be considered on a case by case basis, applying a totality of the circumstances test. Arizona Worker’s Compensation Handbook, § 2.2.2.3.

**58. Are there any specific provisions for “Independent Contractors” pertaining to professional employment organizations/temporary service companies/leasing companies?**

There is no specific identification of “Independent Contractors,” but Arizona recently added provisions for professional employer organizations. Under A.R.S. § 23-901.08, a person engaged in the business of providing professional employer services is subject to the worker's compensation laws whether the person uses the description professional employer organization, staff leasing company, employee leasing company, or any other similar name. Under A.R.S. § 23-901.08, as long as the professional employer organization’s agreement with a client remains in force, it shall be regarded as a co-employer, along with the client of the organization. As such, Both shall be entitled to the protection of the exclusive remedy of worker's compensation. See A.R.S. § 23-901.08(c). However, under A.R.S. § 23-562(a)(5), an agreement between a professional employer organization and the client can specify one party to be responsible for purchasing worker's compensation insurance on behalf of both. Unless the agreement specifically provides otherwise, the client remains solely responsible for control of the work of covered employees. A.R.S. § 23-570.

**59. Are there any specific provisions for “Independent Contractors” pertaining to owner/operators of trucks or other vehicles for driving or delivery of people or property?**

No.

61. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to protect Medicare's interests when setting the right to medical treatment benefits under a claim?

No.

- 62: Does your state permit medical marijuana and what are the restrictions for use and for work activity in your state Workers' Compensation law?

Arizona law permits the usage of medical marijuana. A.R.S. § 36-2801 et. seq. The workers compensation laws don't themselves speak to usage of medical marijuana, though the medical marijuana law does in part address workplace use. An employer is not required to allow ingestion of medical marijuana in the workplace or for any employee to work "under the influence" of marijuana, except that a registered qualifying patient shall not be considered "under the influence" solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment. Employees can be disciplined for ingesting marijuana in the workplace or working "under the influence". A.R.S. § 36-2814. In terms of worker's compensation law, the effect of impairment should otherwise be the same for medical marijuana as for other drugs.

- 63: Does your state permit the recreational use of marijuana and what are the restrictions for use and for work activity in your state Workers' Compensation law?

No, N/A.