

REFERENCE TITLE: right to work..

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# **SB 1248**

Introduced by  
Senators Burton Cahill: Rios

AN ACT

AMENDING SECTIONS 23-1302, 23-1304, 23-1305, 23-1306 AND 23-1501, ARIZONA  
REVISED STATUTES; RELATING TO LABOR RELATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-1302, Arizona Revised Statutes, is amended to  
3 read:

4 23-1302. Prohibition of agreements denying employment because  
5 of membership or nonmembership in labor organization

6 A. ~~No~~ A person shall NOT be denied the opportunity to obtain or retain  
7 employment because of MEMBERSHIP OR nonmembership in a labor organization,~~—~~  
8 nor shall the state or any POLITICAL subdivision ~~thereof~~, OF THE STATE or any  
9 corporation, individual,~~—~~ or association of any kind enter into an agreement,  
10 written or oral, ~~which~~ THAT excludes a person from employment or continuation  
11 of employment because of MEMBERSHIP OR nonmembership in a labor organization.

12 B. THE RIGHT OF EMPLOYEES TO BARGAIN COLLECTIVELY BY AND THROUGH A  
13 LABOR ORGANIZATION SHALL NOT BE DENIED OR ABRIDGED.

14 Sec. 2. Section 23-1304, Arizona Revised Statutes, is amended to read:

15 23-1304. Prohibition of threatened or actual interference to  
16 compel a person to join or not join labor  
17 organization, strike or leave employment

18 A. It is unlawful for an employee, labor organization,~~—~~ or officer,  
19 agent or member ~~thereof~~ OF A LABOR ORGANIZATION, by any threatened or actual  
20 interference with ~~the~~ A person,~~his~~ OR THE PERSON'S immediate family or ~~his~~  
21 property, to compel or attempt to compel ~~such~~ A person to join a labor  
22 organization, to strike against ~~his~~ THE PERSON'S will or to leave ~~his~~ THE  
23 PERSON'S employment.

24 B. IT IS UNLAWFUL FOR ANY EMPLOYER, CONSULTANT, OFFICER, AGENT OR  
25 OTHER EMPLOYEE, BY ANY THREATENED OR ACTUAL INTERFERENCE WITH A PERSON OR THE  
26 PERSON'S IMMEDIATE FAMILY OR PROPERTY, TO COMPEL OR ATTEMPT TO COMPEL THE  
27 PERSON NOT TO JOIN A LABOR ORGANIZATION OR TO LEAVE THE PERSON'S EMPLOYMENT  
28 AGAINST THE PERSON'S WILL. THIS SUBSECTION APPLIES TO AND PROTECTS A PERSON  
29 WHO IS ENGAGED IN LABOR ORGANIZING EFFORTS WHILE THE PERSON IS OFF DUTY.

30 Sec. 3. Section 23-1305, Arizona Revised Statutes, is amended to read:

31 23-1305. Prohibition of conspiracy to induce persons to refuse  
32 to work with members or nonmembers of a labor  
33 organization

34 A combination or conspiracy by two or more persons to cause the  
35 discharge OR DISCIPLINARY ACTION of any person or to cause ~~him~~ THAT PERSON to  
36 be denied employment because ~~he~~ THE PERSON is OR IS not a member of a labor  
37 organization by inducing or attempting to induce any other person to refuse  
38 to work with ~~such~~ THAT person,~~—~~ is illegal.

39 Sec. 4. Section 23-1306, Arizona Revised Statutes, is amended to read:

40 23-1306. Civil liability of person violating article

41 A person who violates ~~any provision of~~ this article, ~~or~~ who enters into  
42 an agreement containing a provision declared illegal by this article,~~—~~ or who  
43 brings about the discharge of, DISCIPLINE OF or denial of employment to any  
44 person because of MEMBERSHIP OR nonmembership in a labor organization shall  
45 be liable to the person injured as the result of such act or provision and

1 may be sued therefor, and in such action any labor organization, EMPLOYER,  
2 POLITICAL subdivision or local OR SUBSIDIARY thereof shall be bound by the  
3 acts of its duly authorized agents acting within the scope of their  
4 authority, and may sue or be sued in its common name.

5 Sec. 5. Section 23-1501, Arizona Revised Statutes, is amended to read:  
6 23-1501. Severability of employment relationships; protection  
7 from retaliatory discharges; exclusivity of  
8 statutory remedies in employment

9 The public policy of this state is that:

10 1. The employment relationship is contractual in nature.

11 2. The employment relationship is severable at the pleasure of either  
12 the employee or the employer unless both the employee and the employer have  
13 signed a written contract to the contrary setting forth that the employment  
14 relationship shall remain in effect for a specified duration of time or  
15 otherwise expressly restricting the right of either party to terminate the  
16 employment relationship. Both the employee and the employer must sign this  
17 written contract, or this written contract must be set forth in the  
18 employment handbook or manual or any similar document distributed to the  
19 employee, if that document expresses the intent that it is a contract of  
20 employment, or this written contract must be set forth in a writing signed by  
21 the party to be charged. Partial performance of employment shall not be  
22 deemed sufficient to eliminate the requirements set forth in this  
23 paragraph. Nothing in this paragraph shall be construed to affect the rights  
24 of public employees under the Constitution of Arizona and state and local  
25 laws of this state or the rights of employees and employers as defined by a  
26 collective bargaining agreement.

27 3. An employee has a claim against an employer for termination of  
28 employment only if one or more of the following circumstances have occurred:

29 (a) The employer has terminated the employment relationship of an  
30 employee in breach of an employment contract, as set forth in paragraph 2 of  
31 this section, in which case the remedies for the breach are limited to the  
32 remedies for a breach of contract.

33 (b) The employer has terminated the employment relationship of an  
34 employee in violation of a statute of this state. If the statute provides a  
35 remedy to an employee for a violation of the statute, the remedies provided  
36 to an employee for a violation of the statute are the exclusive remedies for  
37 the violation of the statute or the public policy set forth in or arising out  
38 of the statute, including the following:

39 (i) The civil rights act prescribed in title 41, chapter 9.

40 (ii) The occupational safety and health act prescribed in chapter 2,  
41 article 10 of this title.

42 (iii) The statutes governing the hours of employment prescribed in  
43 chapter 2 of this title.

44 (iv) The agricultural employment relations act prescribed in chapter  
45 8, article 5 of this title.

1 All definitions and restrictions contained in the statute also apply to any  
2 civil action based on a violation of the public policy arising out of the  
3 statute. If the statute does not provide a remedy to an employee for the  
4 violation of the statute, the employee shall have the right to bring a tort  
5 claim for wrongful termination in violation of the public policy set forth in  
6 the statute.

7 (c) The employer has terminated the employment relationship of an  
8 employee in retaliation for any of the following:

9 (i) The refusal by the employee to commit an act or omission that  
10 would violate the Constitution of Arizona or the statutes of this state.

11 (ii) The disclosure by the employee in a reasonable manner that the  
12 employee has information or a reasonable belief that the employer, or an  
13 employee of the employer, has violated, is violating or will violate the  
14 Constitution of Arizona or the statutes of this state to either the employer  
15 or a representative of the employer who the employee reasonably believes is  
16 in a managerial or supervisory position and has the authority to investigate  
17 the information provided by the employee and to take action to prevent  
18 further violations of the Constitution of Arizona or statutes of this state  
19 or an employee of a public body or political subdivision of this state or any  
20 agency of a public body or political subdivision.

21 (iii) The exercise of rights under the workers' compensation statutes  
22 prescribed in chapter 6 of this title.

23 (iv) Service on a jury as protected by section 21-236.

24 (v) The exercise of voting rights as protected by section 16-1012.

25 (vi) The exercise of free choice with respect to **MEMBERSHIP OR**  
26 nonmembership in a labor organization as protected by section 23-1302.

27 (vii) Service in the national guard or armed forces as protected by  
28 sections 26-167 and 26-168.

29 (viii) The exercise of the right to be free from the extortion of fees  
30 or gratuities as a condition of employment as protected by section 23-202.

31 (ix) The exercise of the right to be free from coercion to purchase  
32 goods or supplies from any particular person as a condition of employment as  
33 protected by section 23-203.

34 (x) The exercise of a victim's ~~leaves~~ right **TO LEAVE WORK** as provided  
35 in sections 8-420 and 13-4439.

36 (d) In the case of a public employee, if the employee has a right to  
37 continued employment under the United States Constitution, the Arizona  
38 Constitution, Arizona Revised Statutes, any applicable regulation, policy,  
39 practice, or contract of the state, any subdivision of the state or other  
40 public entity, or any ordinance of any political subdivision of the state.