

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2111

AN ACT

AMENDING SECTIONS 23-901.08 AND 23-1021, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-901.08, Arizona Revised Statutes, is amended to
3 read:

4 23-901.08. Professional employer organizations

5 A. A person engaged in the business of providing professional employer
6 services is subject to this chapter regardless of whether the person uses the
7 term professional employer organization, PEO, staff leasing company,
8 registered staff leasing company, employee leasing company or any other name.

9 B. As long as the professional employer organization's professional
10 employer agreement with a client remains in force, the professional employer
11 organization shall be regarded as a co-employer of the employee.

12 C. The professional employer organization and its client shall be
13 considered the employer for the purpose of coverage under this chapter and
14 both the professional employer organization and its client shall be entitled
15 to protection of the exclusive remedy set forth in section 23-1022. Both the
16 professional employer organization and its client shall comply with ~~the~~
17 ~~provisions of~~ sections 23-906 and 23-964. The requirements of section
18 23-1021, subsection ~~F~~ D shall be satisfied if either the professional
19 employer organization or its client files the required written certification
20 with the commission.

21 D. When a professional employer organization enters into a
22 professional employer agreement with a client in Arizona, the professional
23 employer organization shall notify its workers' compensation insurance
24 carrier and the commission. The notification shall be on a form approved by
25 the commission and shall include the following information:

26 1. The name and business address of the client employer.

27 2. Whether all or a majority of the client employer's workforce is
28 covered by the professional employer agreement.

29 3. Unless all of the client employer's workforce is covered by the
30 professional employer agreement, the name of the client employer's workers'
31 compensation insurance carrier that is insuring the client employer's
32 obligation to secure compensation under section 23-961 for any employees who
33 are not covered by the professional employer agreement. The professional
34 employer organization shall also notify each client, in writing, of the
35 client's obligation under section 23-961 to secure workers' compensation for
36 any employees who are not covered by the professional employer agreement,
37 even if such employees are hired after the execution of the professional
38 employer agreement.

39 E. If a professional employer agreement is terminated, the
40 professional employer organization shall immediately notify its workers'
41 compensation insurance carrier and the commission, in writing, of the name of
42 the client and the date of termination of the agreement.

1 Sec. 2. Section 23-1021, Arizona Revised Statutes, is amended to read:
2 23-1021. Right of employee to compensation; definitions

3 A. Every employee coming within the provisions of this chapter who is
4 injured, and the dependents of every such employee who is killed by accident
5 arising out of and in the course of his employment, wherever the injury
6 occurred, unless the injury was purposely self-inflicted, shall be entitled
7 to receive and shall be paid such compensation for loss sustained on account
8 of the injury or death, such medical, nurse and hospital services and
9 medicines, and such amount of funeral expenses in the event of death, as are
10 provided by this chapter.

11 B. Every employee who is covered by insurance in the state
12 compensation fund and who is injured by accident arising out of and in the
13 course of employment, and the dependents of every such employee who is
14 killed, provided the injury was not purposely self-inflicted, shall be paid
15 such compensation from the state compensation fund for loss sustained on
16 account of the injury and shall receive such medical, nurse and hospital
17 services and medicines, and such amount of funeral expenses in event of
18 death, as provided in this chapter.

19 ~~C. An employee's injury or death shall not be considered a personal
20 injury by accident arising out of and in the course of employment and is not
21 compensable pursuant to this chapter if the impairment of the employee is due
22 to the employee's use of alcohol or the unlawful use of any controlled
23 substance proscribed by title 13, chapter 34 and is a substantial
24 contributing cause of the employee's personal injury or death. This
25 subsection does not apply if the employer had actual knowledge of and
26 permitted, or condoned, the employee's use of alcohol or the unlawful use of
27 the controlled substance proscribed by title 13, chapter 34.~~

28 ~~D. C.~~ Notwithstanding subsection C of this section, If the employer
29 has established a policy of drug testing or alcohol impairment testing in
30 accordance with chapter 2, article 14 of this title, is maintaining that
31 policy ~~on~~ IN an ongoing manner and, before the date of the employee's injury,
32 the employer files the written certification with the industrial commission
33 as required by subsection ~~F~~ D of this section, an employee's injury or death
34 shall ~~not~~ be considered a personal injury by accident arising out of and in
35 the course of employment ~~and~~ BUT is not compensable pursuant to this chapter,
36 if the employee of such an employer fails to pass, refuses to cooperate with
37 or refuses to take a drug test for the unlawful use of any controlled
38 substance proscribed by title 13, chapter 34 or fails to pass, refuses to
39 cooperate with or refuses to take an alcohol impairment test that is
40 administered by or at the request of the employer not more than twenty-four
41 hours after the employer receives actual notice of the injury, unless the
42 employee proves BY A PREPONDERANCE OF THE EVIDENCE any of the following:

43 1. The employee's use of alcohol or the employee's use of any unlawful
44 substance proscribed by title 13, chapter 34 was not a SUBSTANTIAL
45 contributing cause of the employee's injury or death.

1 2. The alcohol impairment test indicates that the employee's alcohol
2 concentration was lower than the alcohol concentration that would constitute
3 a violation of section 28-1381, subsection A and would not create a
4 presumption that the employee was under the influence of intoxicating liquor
5 pursuant to section 28-1381, subsection G.

6 3. The drug test or alcohol impairment test used cutoff levels for the
7 presence of alcohol, drugs or metabolites that were lower than the cutoff
8 levels prescribed at the time of the testing for transportation workplace
9 drug and alcohol testing programs under 49 Code of Federal Regulations
10 part 40.

11 ~~F.~~ D. An employer that establishes a policy of drug testing or
12 alcohol impairment testing in accordance with chapter 2, article 14 of this
13 title shall file a written certification to that effect with the industrial
14 commission and provide notification to its employees in a manner consistent
15 with section 23-493.04, subsection A that the employer is maintaining that
16 policy.

17 E. IF THE EMPLOYER HAS NOT ESTABLISHED A POLICY OF DRUG TESTING OR
18 ALCOHOL IMPAIRMENT TESTING IN ACCORDANCE WITH CHAPTER 2, ARTICLE 14 OF THIS
19 TITLE AND SUBSECTIONS C AND D OF THIS SECTION, COMPENSATION SHALL NOT BE PAID
20 IF THE EMPLOYER, THE SELF-INSURED EMPLOYER OR THE CARRIER PROVES BY A
21 PREPONDERANCE OF THE EVIDENCE THAT THE IMPAIRMENT OF THE EMPLOYEE IS DUE TO
22 THE EMPLOYEE'S USE OF ALCOHOL OR THE UNLAWFUL USE OF ANY CONTROLLED SUBSTANCE
23 PROSCRIBED BY TITLE 13, CHAPTER 34 AND IS A SUBSTANTIAL CONTRIBUTING CAUSE OF
24 THE EMPLOYEE'S PERSONAL INJURY OR DEATH.

25 ~~E.~~ F. ~~Subsection D~~ SUBSECTIONS C AND E of this section ~~does~~ DO not
26 apply if the employer had actual knowledge of and permitted or condoned the
27 employee's use of alcohol or the employee's unlawful use of any controlled
28 substance proscribed by title 13, chapter 34.

29 G. A CARRIER OR SELF-INSURED EMPLOYER THAT ISSUES AN INITIAL NOTICE OF
30 CLAIM STATUS DENYING A CLAIM SOLELY BY REASON OF SUBSECTION C OR E OF THIS
31 SECTION SHALL PROVIDE WRITTEN NOTICE OF ITS DENIAL TO A PROVIDER THAT HAS
32 FILED WITH THE CARRIER OR SELF-INSURED EMPLOYER AN INITIAL REPORT OF
33 TREATMENT UNDER SECTION 23-908, OR A REPORT OR BILLING FOR TREATMENT. A
34 PROVIDER THAT HAS FILED SUCH A REPORT OR BILLING PRIOR TO THE DATE THE
35 CARRIER OR SELF-INSURED EMPLOYER ISSUES ITS NOTICE OF CLAIM STATUS SHALL BE
36 ENTITLED TO PAYMENT FROM THE CARRIER OR SELF-INSURED EMPLOYER FOR TREATMENT
37 PROVIDED BEFORE THE DATE THE CARRIER OR SELF-INSURED EMPLOYER SENDS THE
38 PROVIDER WRITTEN NOTICE OF THE DENIAL.

39 ~~G.~~ H. Nothing contained in this section shall be construed to enhance
40 or expand the reporting requirements prescribed in section 23-908,
41 subsection E.

42 ~~H.~~ I. For the purposes of this section:

43 1. "Refuses to cooperate" means that the employee engages in any act
44 or omission that impedes the ability of the employer, the insurance carrier

1 or the agents of the employer or insurance carrier to obtain an accurate
2 result on a drug test or an alcohol impairment test.

3 2. "Substantial contributing cause" means anything more than a slight
4 contributing cause.

5 Sec. 3. Conditional enactment

6 This act does not become effective unless the Constitution of Arizona
7 is amended by vote of the people at the next general election to deny or
8 limit workers' compensation benefits to an injured worker whose use of
9 alcohol or unlawful use of a controlled substance was a substantial
10 contributing cause of the worker's injury.