

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R07-269]

PREAMBLE

1. Sections Affected

Article 12
R20-5-1201
R20-5-1202
R20-5-1203
R20-5-1204
R20-5-1205
R20-5-1206
R20-5-1207
R20-5-1208
R20-5-1209
R20-5-1210
R20-5-1211
R20-5-1212
R20-5-1213
R20-5-1214
R20-5-1215
R20-5-1216
R20-5-1217
R20-5-1218
R20-5-1219
R20-5-1220

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing Statute: A.R.S. § 23-364(A)

Implementing Statute: A.R.S. §§ 23-362, 23-363, 23-364(B) through (D), (F), and (G)

3. The effective date of the rules:

July 16, 2007

The original emergency rulemaking became effective January 25, 2007, and will expire on July 24, 2007. The Commission is requesting an immediate effective date, so that the emergency rules currently in effect will continue without interruption. A.R.S. § 41-1032(A)(2) allows an immediate effective date, "To avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction." These rules were promulgated in response to a voter approved initiative that became effective January 1, 2007 (see item 6 below.) It is necessary to renew the emergency rulemaking to avoid a violation of this new state law and the need for the immediate effective date is not created due to the agency's delay or inaction. This Notice of Renewal was filed with the Attorney General office two months before the current Emergency Rules expire.

4. Is this rulemaking a renewal of a previous emergency rulemaking?

Yes

If yes, the Register citation to previous notices of emergency rulemaking:

Notice of Emergency Rulemaking: 13 A.A.R. 473, February 16, 2007

5. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Nancy O. Johnson
Address: 800 W. Washington St., Ste. 303
Phoenix, AZ 85007
Telephone: (602) 542-5948
Fax: (602) 542-6783
E-mail: njohnson@ica.state.az.us

6. An explanation of the rule, including the agency's reasons for initiating the rule:

On November 7, 2006, the Arizona voters approved Proposition 202, referred to as the "Raise the Arizona Minimum Wage for Working Arizonans Act," ("Act"). On December 4, 2006, the Arizona Secretary of State certified the election results by signing the Official Canvas of the general election. Under A.R.S. § 23-364(A), which became effective January 1, 2007, the Industrial Commission of Arizona ("Commission") is given the authority to enforce and implement the Act. Emergency rules promulgated in response to direction in A.R.S. § 23-364(A) became effective on January 25, 2007. The rules are set forth in Title 20, Chapter 5, Article 12 of the *Arizona Administrative Code*. The rules:

- a. Define relevant terms and identify non-exclusive factors for determining an employment relationship;
- b. Provide criteria for the calculation of minimum wage, including the treatment of commissions, tips, tools, equipment, uniforms, board and lodging;
- c. Implement the posting and recordkeeping requirements of the Act by specifying where notices shall be posted and how, and what, records are required to be kept for different classes of employees (e.g. employees receiving tips, employees working on a fixed schedule, and salaried employees who are exempt under 29 CFR 541);
- d. Establish requirements for the filing of administrative complaints, including applicable deadlines for minimum wage complaints and complaints of retaliation;
- e. Address hearing procedures under the Act, including the right to request to a hearing before a Commission Administrative Law Judge, the conduct of the hearing and the right to request review or rehearing;
- f. Address procedures for the collection of money, the assessment of civil penalties (including the assessment of penalties for engaging in conduct that hinders an investigation under the Act), and the informal resolution of disputes; and
- g. Provide a mechanism for a small employer (or class of small employers) to request relief from certain record-keeping requirements.

The Industrial Commission is currently in the process of promulgating permanent rules. A Notice of Rulemaking Docket Opening was published in 13 A.A.R. 873, March 16, 2007 and a Notice of Proposed Rulemaking was filed with the Secretary of State on June 1, 2007. An Oral Proceeding on the Proposed Rulemaking is set for July 26, 2007. Because the final rulemaking will not be effective before the initial rulemaking expires, the Industrial Commission is renewing the emergency rulemaking, pursuant to A.R.S. § 41-1026.

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

Not applicable

8. The summary of the economic, small business, and consumer impact:

Annual costs/revenues changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues.

The ICA will bear moderate to substantial costs for promulgating and enforcing the rules. Costs for promulgating the rules include staff time to write, review, and direct the rules through the rulemaking process. The cost for enforcing the rules is difficult to ascertain at this time, but will include staff time to investigate complaints and to litigate challenges to decisions.

These rules were promulgated in response to direction in A.R.S. § 23-364(A). The cost to the public, including Arizona employers and employees, are based on directives in statute, and may be substantial. The rules merely provide the process to implement those directives. Directives in this new statute that may have a substantial cost to employers are:

- a. The increase in minimum wage,
- b. The fact that the minimum wage applies to all employees under the Act, and
- c. The assessment of civil penalties for violation of the Act.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

10. Incorporations by reference and their location in the rules:

None

11. An explanation of the situation justifying the rule's making as an emergency rule:

On November 7, 2006, the Arizona voters approved Proposition 202, referred to as the "Raise the Arizona Minimum Wage for Working Arizonans Act," ("Act"). On December 4, 2006, the Arizona Secretary of State certified the election results by signing the Official Canvas of the general election. Under A.R.S. § 23-364(A), which became effective January 1, 2007, the Industrial Commission of Arizona ("Commission") is given the authority to enforce and implement the Act. The Commission determined that emergency rules were necessary in order to implement the Act by the effective date, thus avoiding serious prejudice to employers and employees affected by the Act. Emergency rules promulgated in response to direction in A.R.S. § 23-364(A) became effective on January 25, 2007. These emergency rules expire on July 30, 2007, and the permanent rules that the Commission is in the process of promulgating will not be final by that date. Therefore it is necessary to renew the emergency rules for an additional 180 days.

12. The date of the Attorney General's approval of the emergency rule:

Initial approval: January 24, 2007

Approval of renewal: July 16, 2007

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 12. ARIZONA MINIMUM WAGE ACT PRACTICE AND PROCEDURE

Section

<u>R20-5-1201.</u>	<u>Notice of Rules</u>
<u>R20-5-1202.</u>	<u>Definitions</u>
<u>R20-5-1203.</u>	<u>Duty to Provide Current Address</u>
<u>R20-5-1204.</u>	<u>Forms and Poster Prescribed by the Commission</u>
<u>R20-5-1205.</u>	<u>Determination of Employment Relationship</u>
<u>R20-5-1206.</u>	<u>Payment of Minimum Wage; Commissions; Tips or Gratuities</u>
<u>R20-5-1207.</u>	<u>Credits Toward Minimum Wage</u>
<u>R20-5-1208.</u>	<u>Posting Requirements</u>
<u>R20-5-1209.</u>	<u>Records Availability</u>
<u>R20-5-1210.</u>	<u>General Recordkeeping Requirements</u>
<u>R20-5-1211.</u>	<u>Administrative Complaints</u>
<u>R20-5-1212.</u>	<u>Conduct that Hinders Investigation</u>
<u>R20-5-1213.</u>	<u>Findings and Order Issued by the Department</u>
<u>R20-5-1214.</u>	<u>Review of Department Findings and Order; Hearings; Issuance of Decision Upon Hearing</u>
<u>R20-5-1215.</u>	<u>Request for Rehearing or Review of Decision Upon Hearing</u>
<u>R20-5-1216.</u>	<u>Judicial Review of Decision Upon Hearing or Decision Upon Review</u>
<u>R20-5-1217.</u>	<u>Assessment of Civil Penalties Under A.R.S. § 23-364(F)</u>
<u>R20-5-1218.</u>	<u>Collection of Wages or Penalty Payments Owed</u>
<u>R20-5-1219.</u>	<u>Resolution of Disputes</u>
<u>R20-5-1220.</u>	<u>Small Employer Request for Exception to Recordkeeping Requirements</u>

ARTICLE 12. ARIZONA MINIMUM WAGE ACT PRACTICE AND PROCEDURE

R20-5-1201. Notice of Rules

A. This Article applies to all actions and proceedings before the Commission resulting from complaints filed under the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.

B. The Commission shall provide a copy of this Article upon request to any person free of charge.

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. § 23-362 (version two) apply. In addition, unless the context otherwise requires:

"Act" means the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.

“Affected employee” means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.

“Authorized representative” means a person authorized 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.

“Casual Basis,” when applied to babysitting services, means employment which is irregular or intermittent, and which is not performed by an individual whose vocation is babysitting. Casual babysitting services may include the performance of some household work not related to caring for the children provided that such work is incidental to the babysitting assignment.

“Commissions” or “pay on a commission basis” means payment based on a percentage of total sales, or of sales in excess of a specified amount, or on a fixed allowance per unit, or some other formula agreed upon by the employer and employee as a measure of accomplishment. Commissions may be the sole source of wages or payment in addition to other wages.

“Complainant” means a person or organization filing an administrative complaint under the Act.

“Department” means the Commission or Labor Department of the Industrial Commission of Arizona or an authorized representative of the Commission or Department.

“Filing” means actual receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Commission.

“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 necessarily required to be on the employer’s premises, on duty, or at a prescribed work place and all time the employee is suffered or permitted to work.

“Minimum wage” means the rate of pay required under the Act.

“On duty” means time spent working or waiting that is controlled by the employer and that is not permitted to be used by the employee for the employee’s own purpose.

“Tip” or “gratuity” means a sum presented by a customer as a gift in recognition of some service performed that may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts transferred by the employer to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Special gifts in forms other than cash or its equivalent as described in this definition, including theater tickets, passes, or merchandise, shall not be counted as tips received by an employee.

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

“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.

“Workday” means any fixed period of 24 consecutive hours.

“Workweek” means any fixed and regularly recurring period of 7 consecutive workdays.

R20-5-1203. Duty to Provide Current Address

- A.** A complainant shall provide and keep the Labor Department advised of the complainant’s current mailing address and telephone number.
- B.** An employer under investigation by the Department shall provide and keep the Labor Department advised of the employer’s current mailing address and telephone number.

R20-5-1204. Forms and Poster Prescribed by the Department

Forms prescribed by the Department, including the notice (“poster”) required under R20-5-1208, shall not be changed, amended, or otherwise altered without the prior written approval of the Department.

R20-5-1205. Determination of Employment Relationship

- A.** Determination of an employment relationship under the Act, which includes whether a person is an independent contractor, shall be based upon the economic realities of the relationship. Consideration of whether a worker is economically dependent on the business to which the worker renders service may be determined by factors showing dependence, which non-exclusive factors may include:
 - 1. The degree of control that the alleged employer has over the manner in which the work is performed;
 - 2. Whether the worker’s opportunities for profit or loss is dependent on the worker’s managerial skill;
 - 3. The worker’s investment in equipment or material, or employment of other workers;
 - 4. The degree of skill required for the work;
 - 5. The permanence of the working relationship; and
 - 6. The degree to which the services rendered is an integral part of the alleged employer’s business.
- B.** An individual that works for another person without any express or implied compensation agreement is not an employee under the Act. This may include an individual that volunteers his or her services for civic, charitable, or humanitarian rea-

sons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those which the individual proposes to volunteer. In determining whether an individual is a volunteer, the Department will be guided, in part, by Subpart B (Volunteers) of 29 CFR 553 (“Application of the Fair Labor Standards Act to Employees of State of Local Governments”).

R20-5-1206. Payment of Minimum Wage; Commissions; Tips or Gratuities

- A.** Subject to the requirements of the Act and this Article, the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis. If in any workweek the combined wages of an employee is less than the applicable minimum wage, the employer shall pay, in addition to sums already earned, no less than the difference between the amounts earned and the minimum wage as required under the Act.
- B.** The workweek is the basis for determining an employee’s hourly earnings. Once established, an employer shall not change or manipulate an employee’s workweek to evade the requirements of the Act.
- C.** In computing the minimum wage, tips, gratuities, and commissions shall be counted in the workweek in which the tip, gratuity or commission is earned.
- D.** Where consistent with this Article, in determining “hours worked” and “payment of wages,” the Department will be guided by this Article and by 29 CFR 785 (“Hours Worked”) and 29 CFR 531 (“Wage Payments Under the Fair Labor Standards Act of 1938”).

R20-5-1207. Credits Toward Minimum Wage

- A.** For purposes of calculating the permissible credit for tips and gratuities under A.R.S. § 23-363(C), the following applies:
 - 1. An employer intending to exercise a tip credit shall provide written notice to each employee prior to exercising the tip credit;
 - 2. Tips are “customarily and regularly” received in the occupation in which the employee is engaged. For purposes of this subsection, “customarily and regularly” means receiving tips on a consistent and recurrent basis, the frequency of which may be greater than occasional, but less than constant, including the occupations of waiter, waitress, bellhop, busboy, car wash attendant, hairdresser, barber, valet, and service bartender;
 - 3. The employee actually receives the tip free of any control by the employer and the tip becomes the property of the employee;
 - 4. Employees who customarily and regularly receive tips may pool, share, or split tips between them. Where employees pool, share, or split tips, the amount actually retained by each employee is considered the tip of the employee who retained it;
 - 5. Employer-required sharing of tips with employees who do not customarily and regularly receive tips in the occupation in which the employee is engaged, including management or food preparers, shall not be credited toward an employee’s minimum wage; and
 - 6. A compulsory charge for service imposed on a customer by an employer’s establishment shall not be credited toward an employee’s minimum wage unless actually distributed by the employer to the employee in the pay period in which the charge is earned.
- B.** Unless included by a bona fide collective bargaining agreement applicable to the particular employee, an employer may not credit towards the minimum wage the cost of any of the following items:
 - 1. Tools;
 - 2. Equipment;
 - 3. Uniforms, including suits, dresses, aprons, and all other garments worn by an employee as a condition of employment. A uniform of a similar design, color, or material, or forming part of the decorative pattern of an establishment or distinguishing the employee as an employee of the employer, is presumed to be worn as a condition of employment;
 - 4. Laundry or cleaning of uniforms;
 - 5. Maintenance of tools, equipment, or uniforms;
 - 6. Breakage or loss of tools, equipment, or uniforms; and
 - 7. Any other item required by the employer to be worn or used by the employee as a condition of employment or for the primary benefit or convenience of the employer.
- C.** Subject to the requirements of this Section and unless excluded by a bona fide collective bargaining agreement applicable to the particular employee, an employer may include as a credit toward minimum wage the reasonable cost to an employer of furnishing an employee with board, lodging, or other facilities.
- D.** For purposes of subsection (C), the term “reasonable cost” means not more than the actual cost to the employer of the board, lodging, or other facilities furnished to an employee subject to the following:
 - 1. Reasonable cost shall not include a profit to the employer or to any affiliated person; and
 - 2. Reasonable cost may include the cost of operation and maintenance, but shall not exceed the fair rental value.

Notices of Emergency Rulemaking

- E.** An employer may only claim a credit toward the minimum wage for providing board, lodging, or other facilities furnished to an employee, if the following conditions are continuously met:
1. The credit has been authorized by the employee in writing or by a collective bargaining agreement applicable to the particular employee;
 2. The employee actually receives the board, lodging, or other facilities; and
 3. The credit has been recorded in the employer's records.

R20-5-1208. Posting Requirements

Every employer subject to the Act shall post and keep posted at all times a notice ("poster") prescribed by the Department informing employees of their rights under the Act. The notice shall be posted by the employer in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily posted. The employer shall ensure that the notice is not altered, defaced, or covered by other material.

R20-5-1209. Records Availability

- A.** Each employer shall keep the records required under the Act and this Article safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available to the Department within 72 hours following notice from the Department.
- B.** Where microfilm or another method is used for recordkeeping purposes, employers who use the microfilm or another method shall make available to the Department any equipment that is necessary to facilitate inspection and copying of the records.
- C.** Each employer required to maintain records under the Act and this Article shall make such enlargement, recomputation, or transcription of the records and shall submit to the Department such records or reports in a readable format as the Department may request in writing.

R20-5-1210. General Recordkeeping Requirements

- A.** Payroll records required to be kept under the Act include:
1. All basic 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 the pay period earnings or wages of those employees;
 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 straight-time earning, wages, commissions, salary, or overtime pay computation;
 3. Records of additions to or deductions from wages paid and records that support or corroborate such additions or deductions; and
 4. Any written agreements relied upon to calculate credits toward the minimum wage.
- 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, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such 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 earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
 9. Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under subsection (B)(8) of this Section;
 10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. For individual employee records, this includes the dates, amounts, and nature of the items that make up the total additions and deductions;
 11. Total wages paid each pay period; and
 12. Date of payment and the pay period covered by payment.

Notices of Emergency Rulemaking

- C.** For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act, exclusive of board, lodging, or other facilities, 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), (B)(11) and (B)(12) 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 (full time or part time).
For purposes of determining the applicability of this subsection, the Department will be guided by 29 CFR 541 (“Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees”).
- 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 hours were actually worked by the employee; 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 reported by the employee to the employer;
 3. Amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer. The amount per hour that the employer takes as a tip credit shall be reported to the employee in writing each pay period;
 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 such hours;
 5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time earnings for such hours; and
 6. Copy of the notice required under R20-5-1208(A)(1).
- F.** An employer who makes retroactive payment of wages, whether done voluntarily or as otherwise ordered to do so, shall record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

R20-5-1211. Administrative Complaints

- A.** In the case of a complaint alleging a minimum wage violation, a complaint shall be filed with the Labor Department within one year from the date the wages were due.
- B.** In the case of a complaint alleging retaliation, a complaint shall be filed with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.
- C.** A complaint filed with the Labor Department shall be signed by the person filing the complaint or an authorized representative of the person or organization filing the complaint.
- D.** If a complaint is filed by an organization, the complaint shall include the names of affected employees.
- E.** For good cause, and upon its own complaint, the Department may investigate violations under the Act.

R20-5-1212. Conduct that Hinders Investigation

An employer shall be deemed to have hindered an investigation under the Act if the employer engages in conduct, or causes another person to engage in conduct, that delays or otherwise interferes with the Department’s investigation. Conduct that hinders an investigation includes:

1. Obstructing or refusing to admit the Department to any place of employment authorized under the Act;
2. Obstructing or refusing to permit interviews authorized under the Act;
3. Failing to make, keep, or preserve records required under the Act or this Article;
4. Failing to permit the review and copying of records required under the Act and this Article; and
5. Falsifying any record required under the Act or this Article.

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

A. Minimum Wage Violation.

1. After receipt of a complaint alleging non-compliance with the requirement to pay the minimum wage under the Act, the Department shall issue a Findings and Order that determines either:

Notices of Emergency Rulemaking

- a. The employer is in compliance with the minimum wage payment requirement; or
 - b. The employer has violated the minimum wage payment requirement.
 2. The Department shall send 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.
 3. If the Department determines that an employer has violated the minimum wage payment requirement, the Department shall order the employer to pay the employee, or if applicable, affected employees, the balance of the wages owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages.
- B. Retaliation.**
1. After receipt of a complaint alleging retaliation under the Act, the Department shall issue a Findings and Order of its determination. The Department shall send the 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.
 2. If the Department determines that a retaliation violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and take any action deemed necessary to remedy the violation, including where appropriate for each employee, or if applicable, affected employees:
 - a. Rehiring or reinstatement;
 - b. Reimbursement of lost wages and interest;
 - c. Payment of penalty to employees or affected employees as provided for in the Act and this Article; and
 - d. Posting of notices to employees.
 3. If the Department determines that no retaliation has occurred the Department shall notify the parties and shall dismiss the complaint without prejudice. The complainant may, after notification of the Department's determination, bring a civil action under A.R.S. § 23-364(E).
- C. Other Violations.** Civil penalties assessed by the Department for recordkeeping, posting, and other violations under the Act and this Article may be assessed as part of a Findings and Order issued under subsections (A) and (B) or assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall send the Findings and Order to both the employer and the complainant, in the event a complaint has been filed, to their last known addresses served personally or by regular first class mail.
- D.** A Findings and Order issued by the Department shall be in writing and signed by the director of the Department.
- E.** 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.

R20-5-1214. Review of Department Findings and Order; Hearings; Issuance of Decision Upon Hearing

- A.** A party aggrieved by a Findings and Order issued by the Department may request a hearing by filing a written request for hearing with the Department within 30 days after the Findings and Order is served upon the party.
1. Failure to timely file a request for hearing means that the Findings and Order issued by the Department is final and res judicata to all parties.
 2. A request for hearing shall be in writing and contain:
 - a. The name and address of the party requesting the hearing;
 - b. The signature of the party or the party's authorized representative; and
 - c. A statement that a hearing is requested.
- B.** Upon receipt of a timely filed request for hearing, the Department shall refer the matter to the Administrative Law Judge Division of the Commission for hearing.
- C.** Except as otherwise provided in this Section, the hearing shall be conducted under A.R.S. § 41-1061 et seq.
- D.** A person submitting correspondence or other documents, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence or other document upon all other parties, or if represented, the parties' authorized representative.
- E.** The administrative law judge may dismiss a request for hearing when it appears to the judge's satisfaction that the disputed issue or issues have been resolved by the parties.
- F.** The administrative law judge shall, not later than 30 days after the matter is submitted for decision, issue a written decision upon hearing containing findings of fact and conclusions of law. The decision shall be sent to the parties at their last known addresses served personally or by regular first class mail.
- G.** A decision issued under this Section is final when entered unless a party files a request for rehearing or review as provided in R20-5-1215 or commences an action in the Superior Court as provided in R20-5-1216 and A.R.S. § 12-901 et seq. The decision shall contain a statement explaining the review rights of a party.

R20-5-1215. Request for Rehearing or Review of Decision Upon Hearing

- A.** A party may request rehearing or review of a decision issued under R20-5-1214 by filing with the Administrative Law Judge a written request for rehearing or review no later than 15 days after the written decision is mailed to the parties.

Notices of Emergency Rulemaking

- B.** A request for rehearing or review shall be based upon one or more of the following grounds that have materially affected the rights of a party:
 - 1. Irregularities in the hearing proceeding or any order, or abuse of discretion that deprives a party seeking review of a fair hearing;
 - 2. Accident or surprise that could not have been prevented by ordinary prudence;
 - 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 - 4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
 - 5. Bias or prejudice of the Department or administrative law judge; and
 - 6. The findings of fact or conclusions of law contained in the decision are not justified by the evidence or are contrary to law.
- C.** A request for rehearing or review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D.** A party shall have 15 days from the date of the filing of a request for rehearing or review to file a written response. Failure to respond shall not be deemed an admission against interest.
- E.** The administrative law judge shall issue a decision upon review no later than 30 days after receiving a request for review or response, if one is filed.
- F.** A decision upon review is final unless a party seeks judicial review as provided in R20-5- 1216.

R20-5-1216. Judicial Review of Decision Upon Hearing or Decision Upon Review

- A.** A party aggrieved by a decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 may seek review by commencing an action in the Superior Court as provided in A.R.S. § 12-901 et seq. within 35 days from the date a copy of the decision sought to be reviewed is served upon the party affected.
- B.** A decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 is final unless a party seeks judicial review as provided under A.R.S. § 12-901 et seq.

R20-5-1217. Assessment of Civil Penalties Under A.R.S. § 23-364(F)

In addition to violations set forth in the Act, the Department may assess civil penalties for violations of this Article, including the assessment of civil penalties for engaging in conduct that hinders an investigation of the Department.

R20-5-1218. Collection of Wages or Penalty Payments Owed

- A.** Upon determination that wages or penalty payments are due and unpaid to any employee, the employee may, or the Department may on behalf of an employee, obtain judgment and execution, garnishment, attachment, or other available remedies for collection of unpaid wages and penalty payments established by a final Findings and Order of the Department.
- B.** The Department may receive wage or penalty payments on behalf of the employee without assignment of such wages or penalty payments to the Department. The Department may transmit monies it receives as payment to the state treasurer for deposit as provided in A.R.S. § 23-356(C).
- C.** The Department may amend a Findings and Order to conform to the legal name of the business or the person who is the defendant employer to a complaint under the Act, provided it can be shown that proper service of the Findings and Order was made on the defendant or the defendant's agent, unless a judgment has been entered on the order in which case the Department may apply to the clerk of the superior court to amend a judgment that has been issued under a final order, provided it can be shown that proper service was made on the defendant or the defendant's agent.

R20-5-1219. Resolution of Disputes

Notwithstanding any other provision of law, the Department may mediate and conciliate a dispute between the parties.

R20-5-1220. Small Employer Request for Exception to Recordkeeping Requirements

- A.** A small employer, or any category of small employer that is unreasonably burdened by the recordkeeping requirements of the Act and this Article may file a written petition for exception with the Department requesting relief from certain recordkeeping requirements under this Article. The petition shall:
 - 1. State the reasons for the request for relief;
 - 2. State an alternate manner or method of making, keeping, and preserving records that will enable the Department to determine hours worked and wages paid; and
 - 3. Be signed by the employer or an authorized representative of the employer.
- B.** Subject to any conditions or limitations deemed necessary to ensure fulfillment of the purpose and intent of Act, the Department may grant a petition for exception if it finds that:
 - 1. The small employer, or category of small employer is unreasonably burdened by the recordkeeping requirements of the Act and this Article; and
 - 2. The relief requested and alternative proposed will not hinder the Department's enforcement of the Act and this Article.

Notices of Emergency Rulemaking

- C. For good cause, the Department may rescind a prior order granting relief under this Section.
- D. Relief under this Section is not effective until specifically authorized in writing by the Department.
- E. For purposes of this Section, “small employer” means any corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.