



# ARIZONA

## QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

---

PROVIDED BY BAKER DONELSON

*Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.*

## **At-Will Employment**

Arizona is an at-will-employment state. Either an employer or employee can sever the employment relationship at any time and for any nondiscriminatory reason except where the parties have entered into a written contract that specifies the duration of the employment relationship or restricts or limits the ability of either party to terminate the relationship. Nonetheless, the at-will provisions or any restrictions in a written contract can neither affect the rights of public employees provided in the state's constitution, statute, and local laws nor affect the rights of employers and employees in a collective bargaining agreement. Ariz. Rev. Stat. § 23-1501(A)(2). Information regarding the nature of a contractual relationship and how to sever an employment relationship can be found at Ariz. Rev. Stat. § 23-1501.

## **Immigration Verification**

In addition to requiring employers to have all new hires complete the federal form I-9, Arizona law also requires an employer to verify the employment eligibility of any employee through the E-Verify program and keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer. Ariz. Rev. Stat. § 23-214. An employer is prohibited from intentionally employing unauthorized workers. Ariz. Rev. Stat. Ann. § 23-212.

## **Drug Testing**

Arizona labor law allows but does not require an employer to subject a prospective employee or an employee to a drug test as a condition of employment. If an employer elects to subject applicants or employees to drug testing, the employer must carry out the testing in accordance with a written policy drafted for that purpose. Ariz. Rev. Stat. § 23-493.04(A). The employer is required to distribute this policy to every employee subject to testing or must make them available to employees in the same manner as the employer informs its employees of other personnel practices. Ariz. Rev. Stat. § 23-493.04(A). Again, the employer must inform prospective employees that they must undergo drug testing. The written policy must include a statement of the employer's policy regarding the confidentiality of test results and afford an employee the right to request that the employer explain a positive test result in a confidential setting. Ariz. Rev. Stat. §§ 23-493.04(A)(9) & (10).

## **Jury Duty Leave**

In Arizona, it is unlawful for an employer to refuse an employee permission to serve as a juror, or to dismiss or penalize any employee because the employee serves as a grand or trial juror. Ariz. Rev. Stat. § 21-236(B). Additionally, it is unlawful for an employer to require or request an employee to use annual, vacation, or sick leave for time spent responding to a summons for jury duty. Ariz. Rev. Stat. § 21-236(A). No Arizona state law requires the employer to compensate an employee when the employee is on jury duty. Ariz. Rev. Stat. § 21-236(B). An employee may have a wrongful termination claim if this statute is violated.

## **Voting Leave**

On election days, an employer should allow eligible employee voters to vote either at the beginning or at the end of their work shift if there are less than three consecutive hours between the opening or closing of the polls and the beginning or end of the employee's regular work shift. Ariz. Rev. Stat. § 16-402(A). It is unlawful for an employer to penalize or deduct from the employee's salary or wages because the employee was absent for such voting purposes. Ariz. Rev. Stat. § 16-402(A). The employee however is required to apply to the employer for such absence so that the employer would specify the hours for which the employee could be absent. Ariz. Rev. Stat. § 16-402(A).

## **Parental Leave**

Arizona does not have its own parental leave laws. However, employees in Arizona are subject to the federal Family and Medical Leave Act (FMLA). Thus, if an employer is a company or organization with 50 or more employees, the employer must provide 12 weeks of leave to new parents if the parent has recently given birth or adopted a baby. 29 C.F.R. § 825.100(a). Additionally, employers must also provide 12 weeks of leave to new parents who are fostering a child. 29 C.F.R. § 825.100(a). However, the FMLA does not mandate an employer to pay the employee while on parental leave except that the employer shall continue to maintain the employee's health benefits while on leave as if the employee had continued to work instead of taking the leave. 29 C.F.R. § 825.100(a)&(b). The law also requires the employee to give the employer advance notice of this intended parental leave. 29 C.F.R. § 825.100(d).



## **Vacation Leave**

Arizona does not require employers to provide their employees with paid or unpaid vacation benefits. However, if an employer chooses to provide vacation benefits to their employee, they must follow the terms of its established policy or practice or employment contract Ariz. Rev. Stat. Section 23-350. Employers can institute a “use-it or lose-it” policy for vacation time as long as employees are given a reasonable opportunity to use the time they have accrued.

## **Victims’ Leave**

Employers with 50 or more employees must provide leave to employees who are victims of crime. This includes leave to be present at certain criminal proceedings or to obtain (or attempt to obtain) for the health, safety, or welfare of the employee or the employee’s child, an order of protection; an injunction against harassment; or any other injunctive relief. Employees may use accrued paid vacation, personal leave, or sick leave for these purposes. Ariz. Rev. Stat. § 8-420.

## **Paid Sick Leave**

Employees in Arizona are entitled to paid time sick leave. Ariz. Rev. Stat. § 23-372(A)&(B). The number of hours of paid sick leave that an employee is entitled to depends on the size of the employer in terms of employee population. Ariz. Rev. Stat. § 23-372(A)&(B). Employees of an employer with 15 or more employees accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but employees shall not be entitled to accrue or use more than 40 hours of earned paid sick time per year unless the employer selects a higher limit. Ariz. Rev. Stat. § 23-372(A). Employees of an employer with fewer than 15 employees accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but employees shall not be entitled to accrue or use more than 24 hours of earned paid sick time per year unless the employer selects a higher limit. Ariz. Rev. Stat. § 23-372(B). Employees accrue earned paid sick time according to provisions in Ariz. Rev. Stat. § 23-372(D). Paid leave may be used for the diagnosis, care, or treatment of mental or physical illness, injury, or health condition, or preventive medical care of an employee or the employee’s family member, domestic partner, child or parent of the employee’s spouse or domestic partner, parent, grandparent, grandchild, or sibling; for specific purposes related to the employee’s or the employee’s family member’s domestic or sexual violence, abuse, or stalking; or for the closure of employee’s place of business, closure of a child’s school, or place of care by order of a public health official for any health-related reason. Ariz. Rev. Stat. § 23-373.

An employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements that may be used for the same purposes and under the same conditions as earned paid sick time is not required to provide additional paid sick time. Ariz. Rev. Stat. § 23-372(E).

## **Military Leave**

Public employees who attend military duties are entitled to a leave of absence without loss of time, pay, or efficiency rating. Ariz. Rev. Stat. § 38-610(A)&(B).

## **Smoking Laws**

Smoking is prohibited in all public places and places of employment except under limited circumstances. Ariz. Rev. Stat. § 36-601.01(B) for the exceptions. The employer must communicate this prohibition to all existing employees and to all prospective employees upon their application for employment. Ariz. Rev. Stat. § 36-601.01(C). Further, the law obligates the employer among others to place “No Smoking” signs or symbols clearly and conspicuously at the employer’s entrance. Ariz. Rev. Stat. § 36-601(E)(1). Notwithstanding anything provided under the law, an employer is permitted to declare an entire establishment, facility, or outdoor area as a nonsmoking place. Ariz. Rev. Stat. 36-601(D).

## **Break Time to Express Milk**

The Arizona labor statute does not provide for the rights of breastfeeding mothers at work. However, the Arizona Civil Rights Code, Ariz. Rev. Stat. § 41-1443, allows a mother to breastfeed in any area of a public place or a place of public accommodation where the mother is otherwise lawfully present. However, under the federal PUMP For Nursing Mothers Act (PUMP Act), most employees have the right to break time and a private space to express breast milk for their nursing child. All employers covered by the Fair Labor Standards Act (FLSA) must comply with the PUMP Act. PUMP FAQs.

## **Meal and Rest Breaks**

Arizona law requires an employer to pay its employees all wages due. Ariz. Rev. Stat. § 23-355. However, the State of Arizona has no law regulating meal or rest breaks. However, federal law requires that an employer pay any employee for time the employee works during a break. 29 C.F.R. § 785.19.

## **Minimum Wage, Overtime, and Wage Recordkeeping**

The current minimum wage in the state of Arizona for is \$14.35. Effective January 1, 2025, the minimum wage will increase to \$14.70 per hour. This amount shall be increased on January 1 of successive years by the increase in the cost of living. Ariz. Rev. Stat. § 23-363(B). The Industrial Commission of Arizona and additional information on the minimum wage scheme may be accessed on the commission's website. Employers must still comply with federal wage laws and regulations. An employer can pay tipped employees \$3 per hour less than the minimum wage if the employee receives not less than the minimum wage for all hours worked. Ariz. Rev. Stat. § 23-363(C). Employers must retain payroll records showing the hours worked for each day worked, and the wages paid to all employees for a period of four years. Failure to maintain records raises a rebuttable presumption that the employer did not pay the required minimum wage rate. Ariz. Rev. Stat. § 23-364(D).

Arizona does not have a specific overtime law. Thus, certain employers are required to pay their employees in accordance with the Fair Labor Standards Act (FLSA). The FLSA requires covered employers to pay nonexempt employees overtime pay for any hours worked beyond 40 hours in a workweek. 29 U.S.C. 207(a)(1). The current overtime rate is one and one-half times an employee's regular wage. 29 U.S.C. 207(a)(1).

Federal law requires every employer covered by the Fair Labor Standards Act (FLSA) to make, keep, and preserve records of their employees including the wages, hours, and other conditions and practices of employment. 29 U.S.C. § 211(c).

## **Final Payments**

The State of Arizona requires an employer who discharges an employee to pay the wages due to the employee within seven working days or the end of the next regular pay period, whichever is sooner. Ariz. Rev. Stat. § 23-353(A). In the case of an employee who voluntarily quits employment, the employer shall pay all wages due to the employee in the usual manner no later than the regular payday for the pay period during which the termination occurred. Ariz. Rev. Stat. § 23-353(B). Upon termination, employees must be paid "all wages due." Ariz. Rev. Stat. § 23-353.

## **Unemployment Insurance**

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. Unemployment benefits are administered by the Arizona Department of Economic Security and additional information regarding the benefits may be accessed on the Department's website. The Arizona Revised Statutes also provide eligibility requirements that must be satisfied before an unemployed individual can claim these benefits. See Ariz. Rev. Stat. § 23-771 for these eligibility requirements.

## Workers' Compensation

Workers' compensation in Arizona is governed by Article 18, Section 8 of the Arizona State Constitution, Chapter 6 of Title 23 of the Arizona Revised Statutes (A.R.S. § 23-901 et seq.), and Workers' Compensation Practice and Procedure rules contained in the Arizona Administrative Code (A.A.C. R20-5-101 et seq.). The Arizona Workers' Compensation Act, Ariz. Rev. Stat. § 23-901 et seq., reflects a "no-fault" system that allows an employee to receive medical and compensation benefits no matter who caused the job-related accident. If an illness or injury is determined to be job-related, the injured worker may be entitled to medical treatment, temporary compensation for time lost from work, permanent compensation benefits, and vocational rehabilitation.

An injured worker receives compensation based on the worker's average monthly wage at the time of the injury. Ariz. Rev. Stat. § 23-1041. An employee's average monthly wage is presumed to be their actual wages in the 30 days "immediately preceding [their] injury." *Coburn v. Indus. Comm'n of Arizona*, No. 1 CA-IC 22-0030, 2023 WL 5030245, at \*1 (Ariz. App. 1st Div. Aug. 8, 2023) (citing *Elco Veterinary Supply v. Indus. Comm'n*, 137 Ariz. 46, 47-48 (App. 1983)).

The Industrial Commission of Arizona regulates workers' compensation in Arizona. The Industrial Commission of Arizona and additional information regarding the compensation scheme may be accessed on the commission's website.

## Child Labor

Generally, Arizona child labor law prohibits children 13 years of age or younger from work, except in some limited situations. The labor law allows children aged 14 and 15 to work in a broader range of jobs but significantly limits the number of hours per day and per week they may work, especially when school is in session. Those aged 16 and 17 may also work in a broad range of jobs but cannot work in those jobs that have been explicitly deemed to be too hazardous unless a variance is granted. The laws may be found at Ariz. Rev. Stat. § 23-230 et seq.

## Gun Laws

Arizona guns-at-work law restricts employers' ability to prohibit employees from storing firearms in the employee's locked and privately owned motor vehicle or in a locked compartment on the employee's privately owned motorcycle, and not visible from the outside of the motor vehicle or motorcycle except under certain circumstances, including where the employer provides a parking lot, parking garage, or other area designated for parking motor vehicles, that: (a) is secured by a fence or other physical barrier; (b) limits access by a guard or other security measure; and (c) provides temporary and secure firearm storage. Ariz. Rev. Stat. § 12-781. Unlike other states that provide immunity for employers that comply with gun-at-work laws, Arizona's gun-at-work law is silent on employers' immunity.

## Additional Laws and Regulations

### Employee vs. Independent Contractor

Arizona utilizes a "right to control" test to determine whether a worker is an employee or an independent contractor. See the definition of independent contractor in Ariz. Rev. Stat. § 23-902(C). *JA Framing, LLC v. Industrial Commission of Arizona*, No. 1 CA-IC 20-0035, 2021 WL 1578830 at \*3 (April 22, 2021), (stating that based on A.R.S. § 23-902(B) and (C), Arizona courts have held "[t]he distinction between an employee and independent contractor...rests on the extent of control the employer may exercise over the details of the work."). See *JA Framing* for a discussion on the facts courts in Arizona consider as indicia of control. See also *Hunt Bldg. Corp. v. Indus. Com'n of Arizona*, 148 Ariz. 102, 105-106 (1986).

### Polygraph Testing

An employer is prohibited from using only the results of a polygraph examination as the basis for disciplinary action without other corroborative information supporting disciplinary action. Ariz. Rev. Stat. § 38-1108(B). An employer is required to keep confidential the results of a polygraph examination of a law enforcement officer and to use it only for the purpose for which it was administered. Ariz. Rev. Stat. § 38-1108(C). However, these obligations are inapplicable in the case where the law enforcement officer was employed by an agency of the

state as an at-will employee. Ariz. Rev. Stat. § 38-1108(E). An employer may not administer a polygraph examination to a law enforcement officer in administrative investigations. Ariz. Rev. Stat. § 38-1108(A).

### **Equal Pay**

Arizona's Equal Pay Law prohibits employers from paying employees of one sex wages at a lower rate than it pays to employees of the opposite sex in the same establishment for the same quantity and quality of work in the same classification. Ariz. Rev. Stat. § 23-341(A). Agreements to work for a wage lower than that paid for the same work to employees of the opposite sex are void and unenforceable. The law applies to all employers, both public and private, regardless of size. Ariz. Rev. Stat. § 23-340.

### **Data Security Breaches**

An employer who owns, maintains, or licenses unencrypted and unredacted computerized personal information and suspects a security breach is required to investigate. Ariz. Rev. Stat. Ann. § 18-552(A). If a breach is determined to have occurred, the person who owns or licenses the computerized data must notify the individuals affected within 45 days and subject to the needs of law enforcement. Ariz. Rev. Stat. Ann. § 18-552(B). If the breach requires notification of more than 1,000 individuals, the person must notify both: (a) the three largest nationwide consumer reporting agencies; and (b) the attorney general and the Arizona Department of Homeland Security, in writing, in a form prescribed by rule or order of the attorney general or the director of the Arizona Department of Homeland Security, or by providing the attorney general or the director of the Arizona Department of Homeland Security with a copy of the notification. Ariz. Rev. Stat. Ann. § 18-552(B).

### **Medical Marijuana**

Arizona offers medical marijuana registration identification cards for patients with qualifying conditions. Ariz. Rev. Stat. Ann. § 36-2801. An employee may not be penalized for being a medical marijuana cardholder or for receiving a positive drug test result for marijuana. Ariz. Rev. Stat. Ann. § 36-2813(B). If the employee used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment, the employer may penalize or terminate the employee. Ariz. Rev. Stat. Ann. § 36-2813(B).

### **Anti-Discrimination Law**

Employers that have 15 employees or more may not discriminate based on race, color, religion, sex (including pregnancy, childbirth, and related medical conditions), age (40 and older), disability, national origin, or genetic test results. Ariz. Rev. Stat. § 41-1463. The Arizona Civil Rights Act (ACRA) applies to employers who have 15 or more employees. Ariz. Rev. Stat. § 41-1461(7)(a). With regard to sexual harassment claims, however, the ACRA applies to employers with one or more employees. Ariz. Rev. Stat. § 41-1461(7)(a).

### **Mini WARN Act**

Arizona does not have a mini-WARN Act or other similar group layoff notification requirements.

### **School Employees**

Any individual who applied for employment at a school in Arizona is required to disclose whether they have pled guilty or no contest, been convicted, or are awaiting trial for crimes against children or involving a minor, including: 1. A dangerous crime against children pursuant to § 13-705; 2. A violation of §13-1404 or 13-1406 in which the victim was a minor; 3. An act committed in another state or territory that if committed in this state would have been subject to disclosure pursuant to paragraph 1 or 2 of this subsection; 4. Sexual conduct with a minor pursuant to § 13-1405; 5. Any crime that requires the person to register as a sex offender pursuant to § 13-3821; and 6. A preparatory offense as prescribed in § 13-1001 of any offense that is subject to disclosure pursuant to paragraph 1, 2, 3, 4 or 5 of this subsection. Ariz. Rev. Stat. § 15-509 (amended and signed by the Governor on April 8, 2024).