

## Arizona

### Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

#### Topics

##### **I. Discrimination**

No new laws or regulations enacted in 2015 or 2016.

##### **II. Pre-Employment Inquiry Guidelines**

Arizona has enacted a law that creates a voluntary veterans' preference to be applied in hiring, promotion, and retention decisions. A private employer of one or more employees may adopt an employment policy that gives preference to a military veteran over other qualified applicants or employees. An employer that elects to implement a veterans' preference policy must do so in writing and apply the policy uniformly to employment decisions regarding hiring, promotion, or retention during a reduction in the employer's workforce. The law defines "veteran" as a person who served on active duty in the United States armed forces and who was discharged or released from military service under honorable conditions.

In applying the veterans' preference policy, the employer may require a veteran to demonstrate eligibility for the preference by submitting a Department of Defense report of separation form (Form DD-214). The new law also provides that an employer who applies the veterans' preference will not be deemed in violation of any state or local equal employment opportunity law.

A.R.S. § 23-495 and A.R.S. § 23-495.01 (Effective Date 04/06/2015)

##### **III. Family and Medical Leave**

No new laws or regulations enacted in 2015 or 2016.

##### **IV. Wage and Hour Laws**

###### **A. State Regulation of Employee Scheduling**

Arizona has enacted a law providing for state preemption of local scheduling laws. The new law provides that a city, town, or county may not adopt an ordinance, resolution, or other regulation that requires an employer to alter or adjust any employee scheduling unless the alteration or adjustment is required by state or federal law. However, the new law does not prohibit a city, town, or county from implementing a scheduling requirement that applies to its own employees, nor does it prohibit a city or town from prescribing security personnel scheduling in accordance with a public safety plan ordinance that was adopted on or before January 1, 2016.

A.R.S. § 23-205 (Effective 08/05/2016).

###### **B. State Regulation of Employee Benefits**

Arizona has amended its law prohibiting local governments from enacting ordinances that regulate local minimum wage or employee benefits. The amendment clarifies that employee benefits include nonwage compensation, thereby expanding the types of employment benefits prohibited from local regulation.

"Nonwage compensation" is defined to include fringe benefits, welfare benefits, child or adult care plans, sick pay, vacation pay, severance pay, commissions, bonuses, retirement plan or pension contributions, other employment benefits provided in the federal Family and Medical Leave Act, and other amounts promised to an employee that are more than the minimum compensation due the employee by reason of employment. The practical effect of this amendment is that localities are prohibited from enacting ordinances or regulations governing this expanded category of "nonwage" benefits.

A.R.S. § 23-205, A.R.S. § 23-350, A.R.S. § 23-357 (Effective 08/05/2016).

### **C. Minimum Wage Will Increase in 2017**

The minimum wage will increase to \$10.00 on January 1, 2017, \$10.50 on January 1, 2018, \$11 on January 1, 2019, and \$12 on January 1, 2020. For any employee who customarily and regularly receives tips or gratuities from patrons or others, the employer may pay a wage up to \$3.00 per hour less than the minimum wage if the employer can establish by its records of charged tips or by the employee's declaration for federal insurance contributions act (FICA) purposes that for each week, when adding tips received to wages paid, the employee received not less than the minimum wage for all hours worked.

A.R.S. § 23-363 (Effective Date 01/01/2017).

### **V. Drug Testing**

No new laws or regulations enacted in 2015 or 2016.

### **VI. Noncompete and Other Employment Agreements**

No new laws or regulations enacted in 2015 or 2016.

### **VII. Workplace Safety**

No new laws or regulations enacted in 2015 or 2016.

### **VIII. Workers' Compensation**

No new laws or regulations enacted in 2015 or 2016.

### **IX. Miscellaneous**

#### **A. Declaration of Independent Business Status**

Arizona law distinguishes between employees and independent contractors. The new law sets forth criteria for establishing when a worker is an independent contractor. A worker is conclusively presumed to be an independent contractor if the contractor executes a declaration of independent business status that contains the following terms:

- the contractor acknowledges that it operates its own independent business and is an independent contractor;
- the contractor acknowledges that it is not an employee and that the services it provides to the contracting party do not establish a right to unemployment benefits or other rights arising from an employment relationship;

- the contractor handles all tax liability;
- the contractor obtains and maintains registration, licenses, or other necessary authorizations;
- the contractor acknowledges at least six of the following provisions:
  - the contractor is not insured under the contracting party's health insurance or workers' compensation insurance;
  - the contractor may accept work from other sources and is not restricted by the contracting party from doing so;
  - the contractor may accept or decline the contracting party's requests for services;
  - the contracting party expects that the contractor provides services for other parties;
  - the contractor is not economically dependent on the contracting party;
  - the contracting party does not dictate the performance, methods, or process the contractor uses to perform services;
  - the contracting party may impose quality standards and/or a deadline for completion, but the contractor may determine the days and time periods of the work;
  - the contractor is paid by or through the contracting party based on the work it performs and not a regular salary;
  - the contractor provides and maintaining the tools and equipment required for the services;
  - the contractor handles all expenses incurred in performing the services;
  - the contractor acknowledges that the above terms apply to it, its employees, and its independent contractors.

The declaration of independent business status must be signed and dated by the independent contractor.

The new law does not apply to an entity licensed or required to be licensed under the state construction contractor statutes. Notably, the new law provides that an independent contractor relationship can be established even where the parties do not comply with these rules.

The independent contractor agreement described in the new law does not have the same effect as an independent contractor agreement entered under the state workers' compensation statutes. Except to enforce state OSHA provisions, a contracting party's exercise of supervision over a contractor to comply with federal, state, and local laws cannot be considered in the determination of whether an independent contractor relationship exists.

A.R.S. § 23-1601 and A.R.S. § 23-1602. Effective 08/05/2016)

## B. Qualified Market Contractors

Arizona law distinguishes between employees and independent contractors. The new law establishes a new category of workers, Qualified Marketplace Contractors (“QMCs”), who are to be deemed independent contractors under state and local laws if certain criteria are met. The law defines a QMC as a person or entity that contracts to use a digital platform to provide services to third parties. The law defines a Qualified Marketplace Platform (“QMP”) as an entity that operates a website or smartphone app that facilitates a QMC providing a service to a third party and accepts these service requests only through its website or smartphone application (not in person, over the telephone, etc.). This law appears to target workers in the so-called “gig” or sharing economy.

The law ensures that QMCs are independent contractors under state and local laws where:

- all or substantially all payments made to the QMC are for performing services; and
- the services performed by a QMC are governed by a written contract between the QMC and the QMP. The contract must specifically state all of the following:
  - the QMC is performing services as an independent contractor and not an employee;
  - all or substantially all payments made to the QMC are in exchange for performing services or other output;
  - the QMC may work any hours or schedule that the QMC chooses, unless the parties agree otherwise;
  - the QMC may perform services for other parties;
  - the QMC bears all or substantially all of its own expenses in performing its services;
  - the QMC handles taxes on its income; and
  - the contract between the QMC and QMP may be terminated with reasonable notice.

For services performed by a QMC before the law takes effect, the QMC is treated as an independent contractor just as it would be under the new law where:

- all or substantially all payments made to the QMC are for performing services;
- the services performed by a QMC are governed by a written contract between the QMC and the QMP with the same mandatory provisions described above.

The new law clarifies that an independent contractor relationship can be established even where the parties do not comply with these rules. In addition, the law specifically excludes from the definitions of QMCs and QMPs entities and services that transport freight, envelopes, and parcels. The law does not apply to employees of the state, Indian tribes, and religious, charitable, educational, or other organizations where the services provided are excluded from employment as defined in the Federal Unemployment Tax Act.

A.R.S. § 23-1601 (Effective 08/05/2016).

**C. Control of Service Animals**

Arizona has enacted a law providing for state preemption of local scheduling laws. The new law provides that a city, town, or county may not adopt an ordinance, resolution, or other regulation that requires an employer to alter or adjust any employee scheduling unless the alteration or adjustment is required by state or federal law. However, the new law does not prohibit a city, town, or county from implementing a scheduling requirement that applies to its own employees, nor does it prohibit a city or town from prescribing security personnel scheduling in accordance with a public safety plan ordinance that was adopted on or before January 1, 2016.

A.R.S. § 11-1024 (Effective Date 08/06/2016)