

ARIZONA STATE SENATE

RESEARCH STAFF



TO: MEMBERS OF THE SENATE GOVERNMENT
COMMITTEE OF REFERENCE

JASON THEODOROU
LEGISLATIVE RESEARCH ANALYST
GOVERNMENT COMMITTEE
Telephone: (602) 926-3171

DATE: January 19, 2024

SUBJECT: Sunset Reviews of the Industrial Commission of Arizona, Boiler Advisory Board
Occupational Safety and Health Advisory Committee and Occupational Safety and Health
Administration Review Board

Attached is the final report of the sunset reviews of the Industrial Commission of Arizona, Boiler Advisory Board, Occupational Safety and Health Advisory Committee and Occupational Safety and Health Administration Review Board, which were conducted by the Senate Government Committee of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Katie Hobbs

President of the Senate
Senator Warren Petersen

Speaker of the House of Representatives
Representative Ben Toma

Senate Members
Senator Jake Hoffman, Chair
Senator Wendy Rogers, Vice-Chair
Senator Eva Diaz
Senator David C. Farnsworth
Senator Juan Mendez
Senator Janae Shamp
Senator Priya Sundareshan
Senator Justine Wadsack

Industrial Commission of Arizona
Office of the Auditor General
Arizona State Library, Archives and Public Records

Senate Resource Center
Senate Republican Staff
Senate Democratic Staff
Senate Research Staff

Office of the Chief Clerk
House Republican Staff
House Democratic Staff
House Research Staff

Senate Government Committee of Reference Final Report

Industrial Commission of Arizona and Related Advisory/Review Boards

Background

Pursuant to [A.R.S. § 41-2953](#), the Joint Legislative Audit Committee assigned the sunset reviews of the Industrial Commission of Arizona (ICA), Boiler Advisory Board, Occupational Safety and Health Advisory Committee (ADOSH Advisory Committee) and Occupational Safety and Health Administration Review Board (OSHA Review Board) to the Senate Government Committee of Reference and the House Commerce Committee of Reference.

Established in 1925, the ICA is a regulatory agency that oversees various functions related to labor and employment in Arizona. The ICA implements the constitutional requirement to establish a workers' compensation program and is responsible for issues regarding occupational safety and health, youth employment laws, wage dispute resolutions, minimum wage, vocational rehabilitation and whistleblower discrimination complaints. The five-members of the ICA are the policy-setting body appointed by the Governor with consent of the Senate. The Director who oversees the daily operations and works with various agency divisions is also appointed by the Governor with consent of the Senate. The ICA is a self-supporting agency whose operations and other statutorily mandated functions are funded through an annual assessment on workers' compensation premiums ([Ariz. Const. art. 18 § 8](#), [A.R.S. Title 23](#)).

The Arizona Division of Occupational Safety and Health (ADOSH) is within the ICA and, on behalf of the ICA: 1) recommends all standards, rules or changes to the standards or rules to the ICA; 2) has the authority to enforce all ICA-adopted standards or rules; and 3) implements an occupational safety and health program that includes outlined duties and responsibilities, such as providing consultation training services to employers and employees and conducts inspections of workplaces. The ICA appoints the Director of ADOSH ([A.R.S. Title 23, Ch. 2, Art. 10](#)).

The ADOSH Advisory Committee was established in 1972 to assist the ICA in cooperating with the federal government to establish and maintain Arizona-specific occupational safety standards and regulations. The number of members on the ADOSH Advisory Committee is not prescribed by statute. However, the ICA must appoint ADOSH Advisory Committee members to be composed of a reasonably balanced representation of regulated industries, including agriculture, labor and other persons knowledgeable in safety and health. The Director of the ICA serves as an ex officio member ([A.R.S. § 23-409](#)).

The Boiler Advisory Board was established in 1977 to assist the ICA in drafting standards and regulations for boilers, pressure vessels and lined hot water heaters (boilers). The five ICA-appointed members comprised of one licensed contractor, an owner or operator of a boiler and one representative each from the boiler industry, a public utility and the insurance industry. The Boiler Advisory Board must annually elect a chairperson from its membership ([A.R.S. § 23-486](#)).

The OSHA Review Board is established within the ICA to hear and rule on appeals of administrative law judge decisions generated under ADOSH. The five-members are appointed by the Governor and who by reason on training, education or experience are qualified to carry out the

OSHA Review Board powers and duties. The OSHA Review Board must elect a chairperson from its membership ([A.R.S. § 23-422](#)).

The ICA, Boiler Advisory Board, ADOSH Advisory Committee and OSHA Review Board are statutorily set to terminate on July 1, 2024, unless legislation is enacted for their continuation ([A.R.S. §§ 41-3024.17](#), [41-3024.18](#), [41-3024.19](#) and [41-3024.20](#)).

Committee of Reference Sunset Review Activity

Pursuant to [A.R.S. § 41-2954](#), the Senate Government Committee of Reference met on Wednesday, January 17, 2024, to review and consider the ICA's, Boiler Advisory Board's , ADOSH Advisory Committee's and OSHA Review Board's responses to the statutorily-outlined sunset factors and receive public testimony.

Committee of Reference Recommendations

The Senate Government Committee of Reference recommended that the ICA, Boiler Advisory Board, ADOSH Advisory Committee and OSHA Review Board be continued for two years, until July 1, 2026.

Appendices

1. Meeting Notice
2. Minutes of the Senate Government Committee of Reference
Attachment A: Presentation by the ICA
3. Chairperson's letters requesting the ICA's, Boiler Advisory Board's, ADOSH Advisory Committee's and OSHA Review Board's response to sunset factors
4. The ICA's, Boiler Advisory Board's, ADOSH Advisory Committee's and OSHA Review Board's response to sunset factors

Interim agendas can be obtained via the Internet at <http://www.azleg.gov/Interim-Committees>

ARIZONA STATE SENATE

INTERIM MEETING NOTICE

OPEN TO THE PUBLIC

SENATE GOVERNMENT COMMITTEE OF REFERENCE

Date: Wednesday, January 17, 2024

Time: 9:00 A.M.

Place: SHR 1

Members of the public may access a livestream of the meeting here:

<https://www.azleg.gov/videoplayer/?clientID=6361162879&eventID=2024011033>

AGENDA

1. Call to Order
2. Roll Call
3. Opening Remarks
4. ~~Sunset Review of the Arizona Commerce Authority~~
 - ~~• Presentation by the Arizona Office of the Auditor General~~
 - ~~• Response by the Arizona Commerce Authority~~
 - ~~• Public Testimony~~
 - ~~• Discussion and Recommendations~~
5. ~~Sunset Review of the Arizona Department of Administration~~
 - ~~• Presentation by the Arizona Office of the Auditor General~~
 - ~~• Response by the Arizona Department of Administration~~
 - ~~• Public Testimony~~
 - ~~• Discussion and Recommendations~~
4. Sunset Review of the Arizona Department of Homeland Security
 - Presentation by the Arizona Department of Homeland Security
 - Public Testimony
 - Discussion and Recommendations
5. Sunset Review of the Arizona Registrar of Contractors
 - Presentation by the Arizona Registrar of Contractors
 - Public Testimony
 - Discussion and Recommendations
6. Sunset Review of the Arizona State Board of Technical Registration
 - Presentation by the Arizona State Board of Technical Registration
 - Public Testimony
 - Discussion and Recommendations
7. Sunset Review of the Governor's Office on Tribal Relations
 - Presentation by the Governor's Office on Tribal Relations
 - Public Testimony
 - Discussion and Recommendations

8. Sunset Review of the State Personnel Board
 - Presentation by the State Personnel Board
 - Public Testimony
 - Discussion and Recommendations
9. Sunset Review of the Industrial Commission of Arizona
 - Presentation by the Industrial Commission of Arizona
 - Public Testimony
 - Discussion and Recommendations
10. Sunset Review of the Boiler Advisory Board
 - Presentation by the Boiler Advisory Board
 - Public Testimony
 - Discussion and Recommendations
11. Sunset Review of the Occupational Safety and Health Advisory Committee
 - Presentation by the Occupational Safety and Health Advisory Committee
 - Public Testimony
 - Discussion and Recommendations
12. Sunset Review of the Occupational Safety and Health Review Board
 - Presentation by the Occupational Safety and Health Review Board
 - Public Testimony
 - Discussion and Recommendations
13. Sunset Review of the Arizona Commerce Authority
 - Presentation by the Arizona Office of the Auditor General
 - Response by the Arizona Commerce Authority
 - Public Testimony
 - Discussion and Recommendations
14. Sunset Review of the Arizona Department of Administration
 - Presentation by the Arizona Office of the Auditor General
 - Response by the Arizona Department of Administration
 - Public Testimony
 - Discussion and Recommendations
15. Adjourn

Members:

Senator Jake Hoffman, Chair

Senator Wendy Rogers, Vice-chair

Senator Eva Diaz

Senator David C. Farnsworth

Senator Juan Mendez

Senator Janae Shamp

Senator Priya Sundareshan

Senator Justine Wadsack

01/11/2024

01/12/2024

hf

For questions regarding this agenda, please contact Senate Research Department.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary's Office: (602) 926-4231 (voice). Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA STATE SENATE

SENATE GOVERNMENT COMMITTEE OF REFERENCE

Minutes of the Meeting

January 17, 2024

9:00 A.M., SHR 1

Members of the public may access a livestream of the meeting here:

<https://www.azleg.gov/videooplayer/?clientID=6361162879&eventID=2024011033>

Members Present:

Senator Jake Hoffman, Chair
Senator Wendy Rogers, Vice-Chair
Senator Eva Diaz
Senator David C. Farnsworth
Senator Juan Mendez
Senator Janae Shamp
Senator Priya Sundareshan
Senator Justine Wadsack

Staff:

Jason Theodorou, Government Research Analyst
Alanna Bendel, Government Research Assistant Analyst
Michael Ayala, Government Research Intern

Chairman Hoffman called the meeting to order at 9:09 a.m. and attendance was taken.

OPENING REMARKS

Senator Hoffman requested the staff introduce themselves as follows:

- Jason Theodorou, Government Research Analyst
- Alanna Bendel, Government Research Assistant Analyst
- Michael Ayala, Government Research Intern
- Jackson Cooper, Government Committee Secretary

SUNSET REVIEW OF THE ARIZONA DEPARTMENT OF HOMELAND SECURITY

Presentation by the Arizona Department of Homeland Security

Kimberly O'Connor, Executive Deputy Director, Arizona Department of Homeland Security, distributed and explained a PowerPoint presentation entitled "Arizona Department of Homeland Security" (Attachment A). Ms. O'Connor also distributed a booklet entitled "Sunset Review, 2024 Report" (Attachment B).

Susan Dzbanko, Deputy Director of Grant Administration, Arizona Department of Homeland Security, continued with the PowerPoint presentation (Attachment A).

Ryan Murray, Deputy Director, Statewide Information Security and Privacy Office, and Interim Chief Information Security Officer, Arizona Department of Homeland Security, continued with the PowerPoint presentation (Attachment A) and answered questions posed by the Committee.

Ms. Dzbanko answered questions posed by members of the Committee.

Public Testimony

Gil Orrantia, Former Director, Arizona Department of Homeland Security, testified in support of the Arizona Department of Homeland Security.

Sheriff Mark Lamb, Pinal County, testified in support of the Arizona Department of Homeland Security.

Sheriff Leon Wilmot, Yuma County, testified in support of the Arizona Department of Homeland Security.

Robert Watkins, on behalf of Sheriff Mark Danells, Cochise County, testified in support of the Arizona Department of Homeland Security.

Discussion and Recommendations

The Committee offered comments.

Senator Rogers moved that the Senate Government Committee of Reference make the recommendation to continue the Arizona Department of Homeland Security for 2 years until July 1, 2026. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 1).

Senators Shamp, Sundareshan, Wadsack, Mendez, Rogers and Hoffman explained their vote.

SUNSET REVIEW OF THE ARIZONA REGISTRAR OF CONTRACTORS

Presentation by the Arizona Registrar of Contractors

Tom Cole, Executive Deputy Director, Arizona Registrar of Contractors, distributed and explained a PowerPoint presentation entitled "Arizona Registrar of Contractors" (Attachment C) and explained the function and purpose of the Arizona Registrar of Contractors. Mr. Cole answered questions posed by members of the Committee.

Public Testimony

No public testimony took place.

Discussion and Recommendations

Senator Rogers moved that the Senate Government Committee of Reference make the recommendation to continue the Arizona Registrar of Contractors for 2 years until July 1, 2026. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 2).

Senator Hoffman explained his vote.

SUNSET REVIEW OF THE ARIZONA STATE BOARD OF TECHNICAL REGISTRATION

Presentation by the Arizona State Board of Technical Registration

Judith Stapley, Executive Director, Arizona State Board of Technical Registration, distributed and explained a PowerPoint presentation entitled "Sunset Audit Review Committee of Reference 2024" (Attachment D) and explained the function and purpose of the Arizona State Board of Technical Registration. Ms. Stapley answered questions posed by members of the Committee.

Senator Hoffman offered comments.

Public Testimony

No public testimony took place.

Discussion and Recommendations

Senator Rogers moved that the Senate Government Committee of Reference make the recommendation to convert the Occupational Licenses under the Arizona State Board of Technical Registration to a less restrictive regulation.

The Committee offered comments.

The motion CARRIED with a roll call vote of 5-3-0 (Attachment 3).

Senators Mendez, Sundareshan, Wadsack and Hoffman explained their vote.

SUNSET REVIEW OF THE GOVERNOR'S OFFICE ON TRIBAL RELATIONS

Presentation by the Governor's Office on Tribal Relations

Jason Chavez, Director of Tribal Affairs, Governor's Office on Tribal Relations, distributed and explained a PowerPoint presentation entitled "Governor's Office on Tribal Relations" (Attachment E) and a folder with documents referring to the Governor's Office on Tribal Relations (Attachment F). Mr. Chavez answered questions posed by the Committee.

Public Testimony

Senator Theresa Hatathlie, Legislative District 6, testified in support of the Governor's Office on Tribal Relations.

Senator Sally Gonzales, Legislative District 20, testified in support of the Governor's Office on Tribal Relations and answered questions posed by the Committee.

Discussion and Recommendations

Senator Rogers moved that the Senate Government Committee of Reference make the recommendation to continue the Governor's Office on Tribal Relations for 2 years until July 1, 2026. The motion CARRIED with a roll call vote of 8-0-0 (Attachment 4).

Senators Mendez, Sundareshan, Rogers and Hoffman explained their vote.

SUNSET REVIEW OF THE STATE PERSONNEL BOARD

Presentation by the State Personnel Board

Zachariah Tolliver, Executive Director, State Personnel Board, distributed and explained a PowerPoint presentation entitled "Arizona State Personnel Board" (Attachment G). Mr. Tolliver answered questions posed by the Committee.

Public Testimony

No public testimony took place.

Discussion and Recommendations

Senator Rogers moved that the Senate Government Committee of Reference make the recommendation to continue the State Personnel Board for 2 years until July 1, 2026. The motion CARRIED with a roll call vote of 6-0-2 (Attachment 5).

Senators Mendez and Sundareshan explained their vote.

SUNSET REVIEW OF THE ARIZONA COMMERCE AUTHORITY

Presentation by the Arizona Office of the Auditor General

Monette Kiepke, Performance Audit Manager, Office of the Auditor General, distributed and explained a PowerPoint presentation entitled "Arizona Commerce Authority, Performance Audit and Sunset Review" (Attachment H) and explained the findings from the Auditor General's Sunset Review. Ms. Kiepke answered questions posed by the Committee.

Response by the Arizona Commerce Authority

Sandra Watson, President and CEO, Arizona Commerce Authority (ACA), distributed and explained a PowerPoint presentation entitled "Arizona Commerce Authority, An Overview" (Attachment I) as well as a handout entitled "Update on ACA Actions In Response to September 2023 Performance Audit" (Attachment J). Ms. Watson played a video on the ACA's role in bringing Lucid Motors to Arizona. Ms. Watson answered questions posed by the Committee.

RECESS

At 12:15 p.m. the Chairman recessed the meeting to the sound of the gavel.

RECONVENE

At 3:33 p.m. the Chairman called the meeting to order.

Response by the Arizona Commerce Authority (continued)

Ms. Watson answered additional questions posed by the Committee.

Public Testimony

Greg Blackie, Arizona Free Enterprise Club, testified against the continuation of the Arizona Commerce Authority.

Discussion and Recommendations

Senator Rogers moved that the Senate Government Committee of Reference make the recommendation to revise or consolidate the Arizona Commerce Authority. The motion CARRIED with a roll call vote of 4-3-1 (Attachment 6).

Senators Sundareshan, Mendez, Wadsack, Shamp, Rogers and Hoffman explained their vote.

SUNSET REVIEW OF THE INDUSTRIAL COMMISSION OF ARIZONA

SUNSET REVIEW OF THE BOILER ADVISORY BOARD

SUNSET REVIEW OF THE OCCUPATIONAL SAFETY AND HEALTH ADVISORY COMMITTEE

SUNSET REVIEW OF THE OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

Presentation by the Industrial Commission of Arizona

Gaetano Testini, Executive Deputy Director, Industrial Commission of Arizona, distributed and explained a PowerPoint presentation entitled "Industrial Commission of Arizona" (Attachment K) and explained the function and purpose of the Industrial

Commission of Arizona, the Occupational Safety and Health Advisory Committee, the Boiler Advisory Board, and the Occupational Safety and Health Review Board. Mr. Testini also distributed a booklet entitled "The Industrial Commission of Arizona and Related Advisory/Review Boards, Review of Sunset Factors, 2023" (Attachment L). Mr. Testini answered questions posed by the Committee.

Public Testimony

No public testimony took place.

Discussion and Recommendations

Senator Rogers moved that the Senate Government Committee of Reference make the recommendation to continue the Industrial Commission of Arizona, the Boiler Advisory Board, the Occupational Safety and Health Advisory Committee and the Occupational Safety and Health Review Board for 2 years until July 1, 2026.

Senator Hoffman offered comments.

The motion CARRIED with a roll call vote of 7-0-1 (Attachment 7).

Senators Mendez, Shamp, Sundareshan and Rogers explained their vote.

SUNSET REVIEW OF THE ARIZONA DEPARTMENT OF ADMINISTRATION

Presentation by the Arizona Office of the Auditor General

Miguel Caro Mateus, Performance Audit Manager, Office of the Auditor General, distributed and explained a PowerPoint presentation entitled "Arizona Department of Administration, Performance Audit and Sunset Review" (Attachment M) and explained the findings from the Auditor General's Sunset Review. Mr. Caro Mateus answered questions posed by the Committee.

Response by the Arizona Department of Administration

Elizabeth Alvarado Thorson, Executive Deputy Director, Arizona Department of Administration, distributed and explained a PowerPoint presentation entitled "Arizona Department of Administration, Sunset Hearing Presentation" (Attachment N) and explained the purpose and function of the Arizona Department of Administration.

Public Testimony

No public testimony took place.

Discussion and Recommendations

Senator Rogers moved that the Senate Government Committee of Reference make the recommendation to continue the Arizona Department of Administration for 2 years until July 1, 2026. The motion CARRIED with a roll call vote of 7-0-1 (Attachment 8).

Senators Farnsworth, Mendez, Shamp, Sundareshan, Rogers and Hoffman explained their vote.

Attached is a list noting the individuals who registered their position on the agenda items (Attachment O).

Attached are forms noting the individuals who submitted a speaker slip on the agenda items (Attachment P).

There being no further business, the meeting was adjourned at 5:19 p.m.

Respectfully submitted,

Jackson Cooper
Committee Secretary

(Audio recordings and attachments are on file in the Secretary of the Senate's Office/Resource Center, Room 115. Audio archives are available at <http://www.azleg.gov>)

2024 COMMITTEE OF
REFERENCE PRESENTATION



***INDUSTRIAL
COMMISSION OF
ARIZONA***



INDUSTRIAL COMMISSION OF ARIZONA

Our Mission

Protect the life, health, safety, and welfare of Arizona's workforce.

Established

Established in 1925 as a result of legislation.

Size

The Industrial Commission of Arizona has approximately 200 FTEs.

ICA DIVISIONS

- Claims
- Medical Resource Office
- Legal
- Special Fund
- Arizona Division of Occupational Safety and Health (ADOSH)
- Administrative Law Judge
- Labor



CLAIMS DIVISION

The Claims Division regulates the workers' compensation industry by ensuring that claims are processed in compliance with the law, maintains the official record for all Arizona workers' compensation claims, processes portions of the claims, and provides training and instruction to system participants.

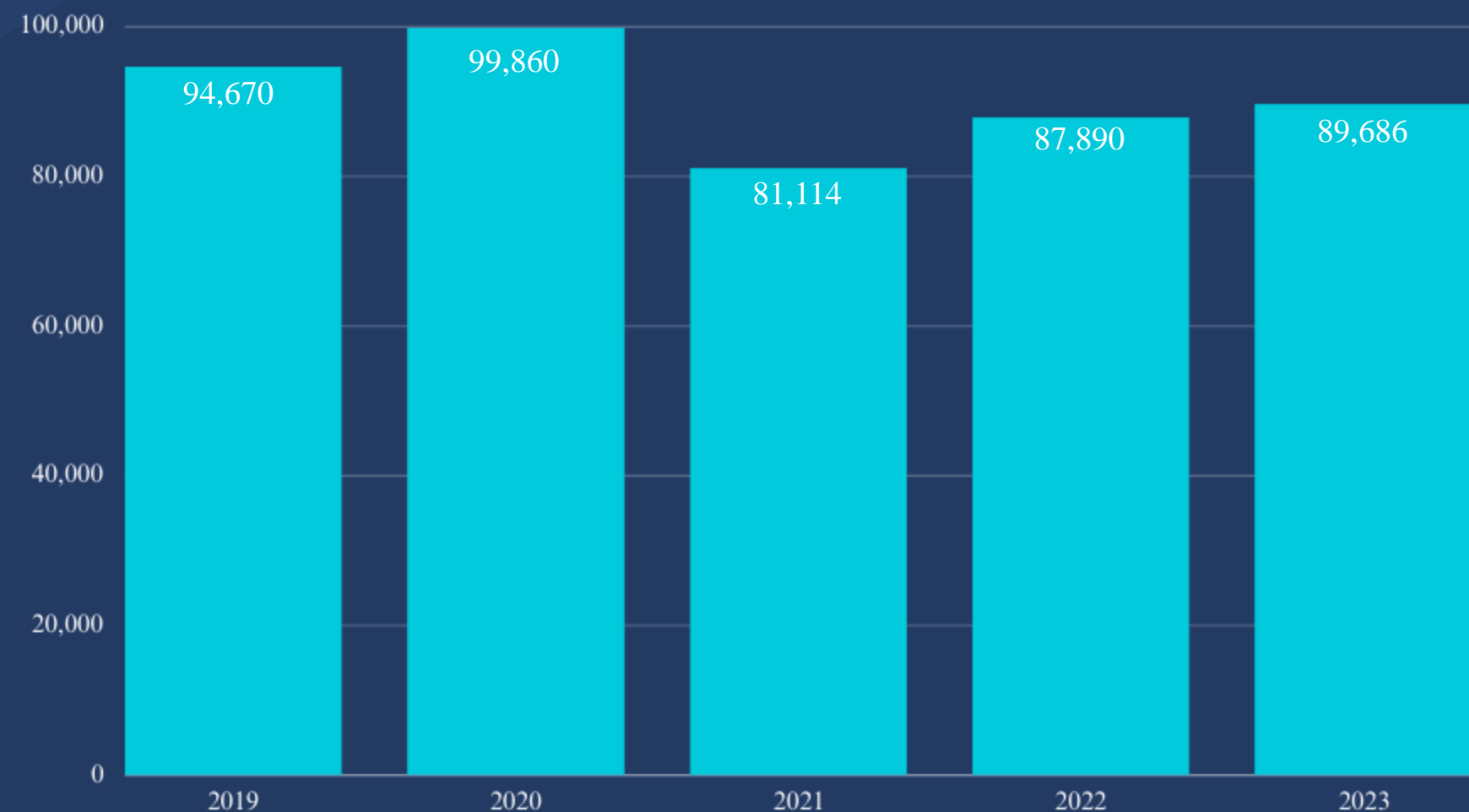
In FY23, the Claims Division issued 1,770 LEC awards. The average days to an award was 35. Statutory requirement - 90 days.

In FY14, the average processing time was 47 days.

Point of Improvement

To better serve injured workers who are navigating the workers' compensation system, the ICA has increased its Ombudsman team from one person to four.

NUMBER OF WORKERS' COMPENSATION CLAIMS FILED (FISCAL YEAR)

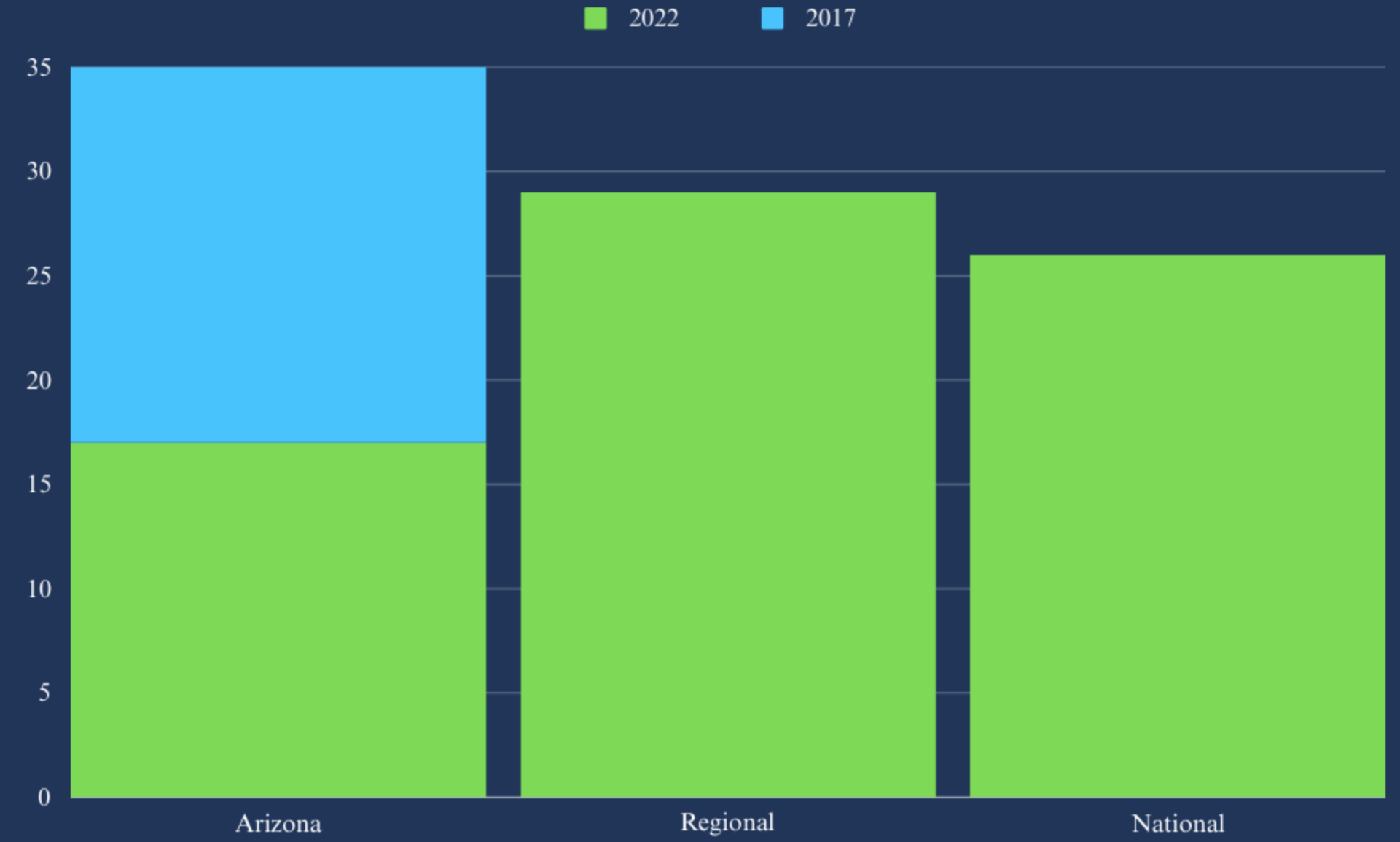




MEDICAL RESOURCE OFFICE

The Medical Resource Office maintains and annually updates the Arizona Workers' Compensation Physicians' and Pharmaceutical Fee Schedule in accordance with A.R.S. § 23-908(B).

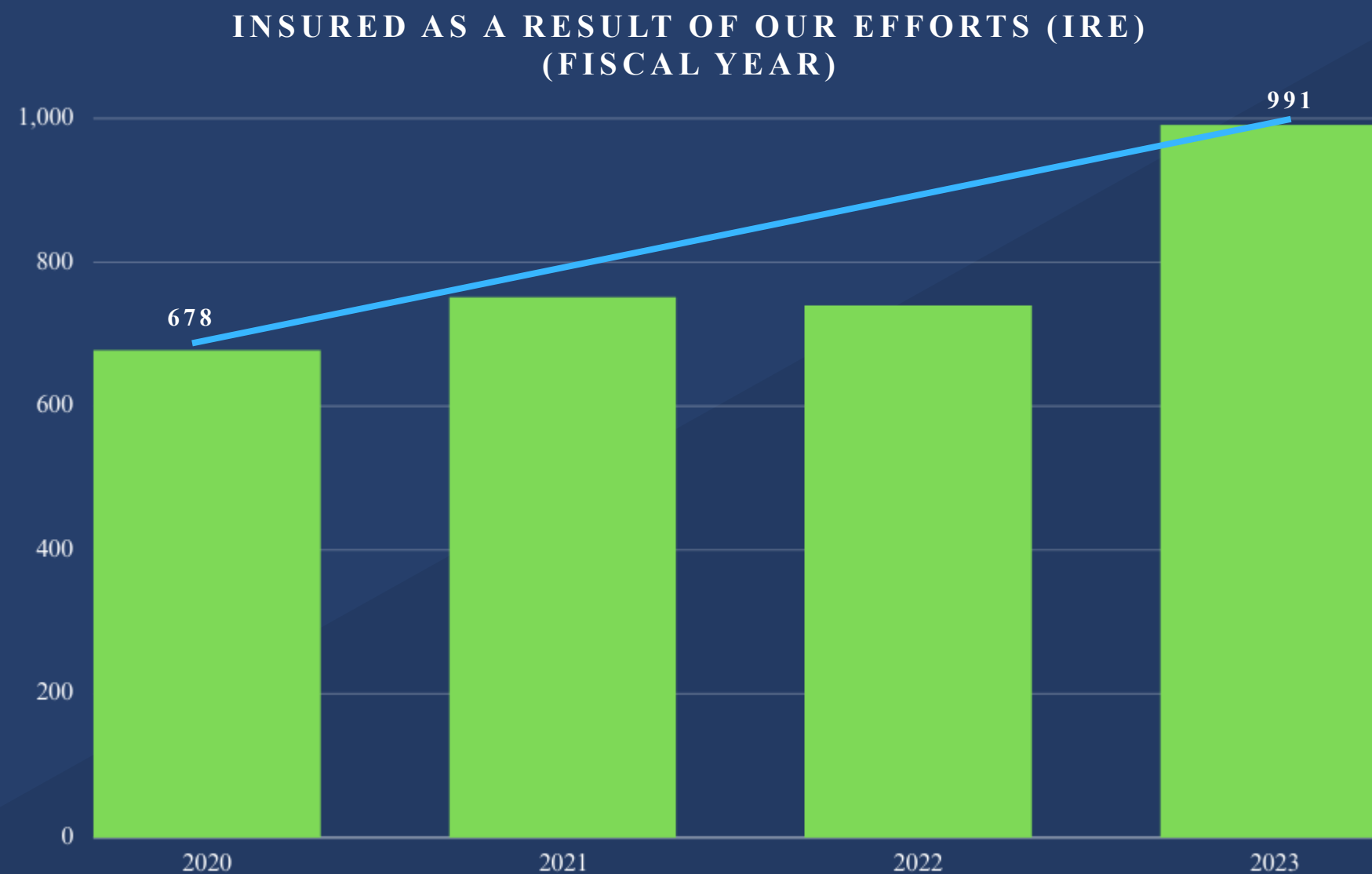
PERCENTAGE OF CLAIMS WITH AT LEAST ONE OPIOID



Point of Improvement
The Medical Resource Office publishes the Fee Schedule in October every year. This puts stakeholders a year behind on pharmaceutical costs. The MRO will be publishing the Fee Schedule earlier in the calendar year.

LEGAL DIVISION

Through its Legal Division, the Commission investigates employers, educates employers, and initiates civil penalties against uninsured employers. The Legal Division uses information from the National Council on Compensation Insurance coverage database to identify employers whose insurance coverage either is about to lapse, or has lapsed.



In FY14, 426 employers secured workers' compensation coverage for their employees as a direct result of the efforts of the compliance unit, by FY23, that number rose to 991.

Point of Improvement

- Legal has engaged in significant rulemaking updating and modernizing A.A.C. Title 20.
- The Legal Division has expanded the ICA attorney training program aimed at making all ICA attorneys certified workers' compensation specialist.

SPECIAL FUND

Serving as the safety net for the Arizona workers' compensation system, the Special Fund is a "trust fund" that was legislatively created in 1969 for the express purpose of providing workers' compensation benefits to injured workers whose employers did not have workers' compensation.

Total Liabilities 2022

\$218.8

Total Assets 2022

\$384.4

In FY23, the Special Fund reimbursed 570 apportionment requests and had an annual expenditure cost of amount of \$2.86 million related to apportionment.

Point of Improvement

The annual expenditures for vocational rehabilitation in FY23 total \$229,237. The Special Fund is looking to increase vocational rehabilitation by holding trainings at the Industrial Commission for injured workers.



ADOSH - COMPLIANCE

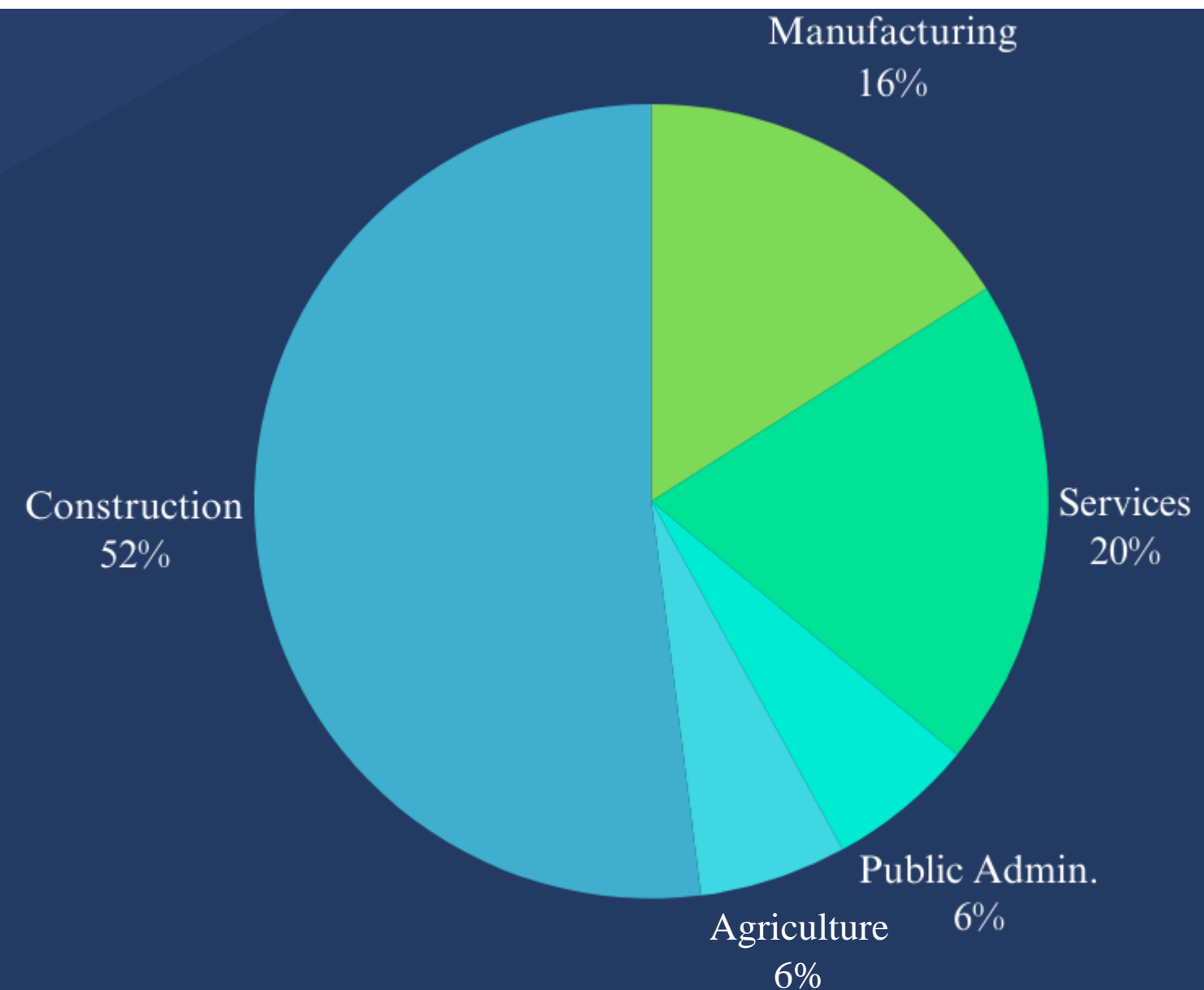
Under the authority found in A.R.S. § 23-401, ADOSH conducts unannounced inspections of workplaces throughout Arizona to determine whether employers are complying with the Occupational Safety and Health Act and standards. Inspections may be the result of imminent danger, a workplace fatality, a referral, a complaint, a planned inspection, or a follow-up to verify previously cited violations have been corrected.

In FY23, the ADOSH Compliance Division:

- Conducted 763 inspections.
- Issued 595 citations that were classified as serious, repeat, or willful.
- Issued 927 citations what were classified as non-serious.
- Assessed \$499,603 in penalties.

Point of Improvement

The Industrial Commission of Arizona will be reorganizing ADOSH to allow for greater customer service by creating an ADOSH Administrative Division to handle complaints and public records requests.



ADOSH - CONSULTATION

ADOSH's Consultation program is responsible for all safety and health education and training services, including onsite consultation visits, seminars, and the preparation and distribution of video and written materials, and newsletters.



In FFY22, the ADOSH Consultation Division:

- Conducted 505 safety visits.
- Identified 1,233 serious and non-serious hazards.
- Removed 47,631 employees from a serious hazard.
- Helped employers save more than \$3.2 million in potential citations and fines.

Point of Improvement

The Industrial Commission of Arizona will be looking to expand and strengthen its partnership programs.

ADOSH ADVISORY COMMITTEE

The Arizona Occupational Safety and Health Advisory Committee was established in 1972 under A.R.S. § 23-409(A) to provide recommendations and assistance to the Industrial Commission of Arizona in the drafting of standards and regulations.

BOILER ADVISORY BOARD

The Arizona Boiler Advisory Board (“Board”) was established in 1977 under A.R.S. § 23-474(2) to assist the Industrial Commission of Arizona (“Commission”) in the drafting standards and regulations related to boilers, lined hot water heaters, and pressure vessels (“boilers”).

The Board consists of 5 members appointed by the Commission.

OSHA REVIEW BOARD

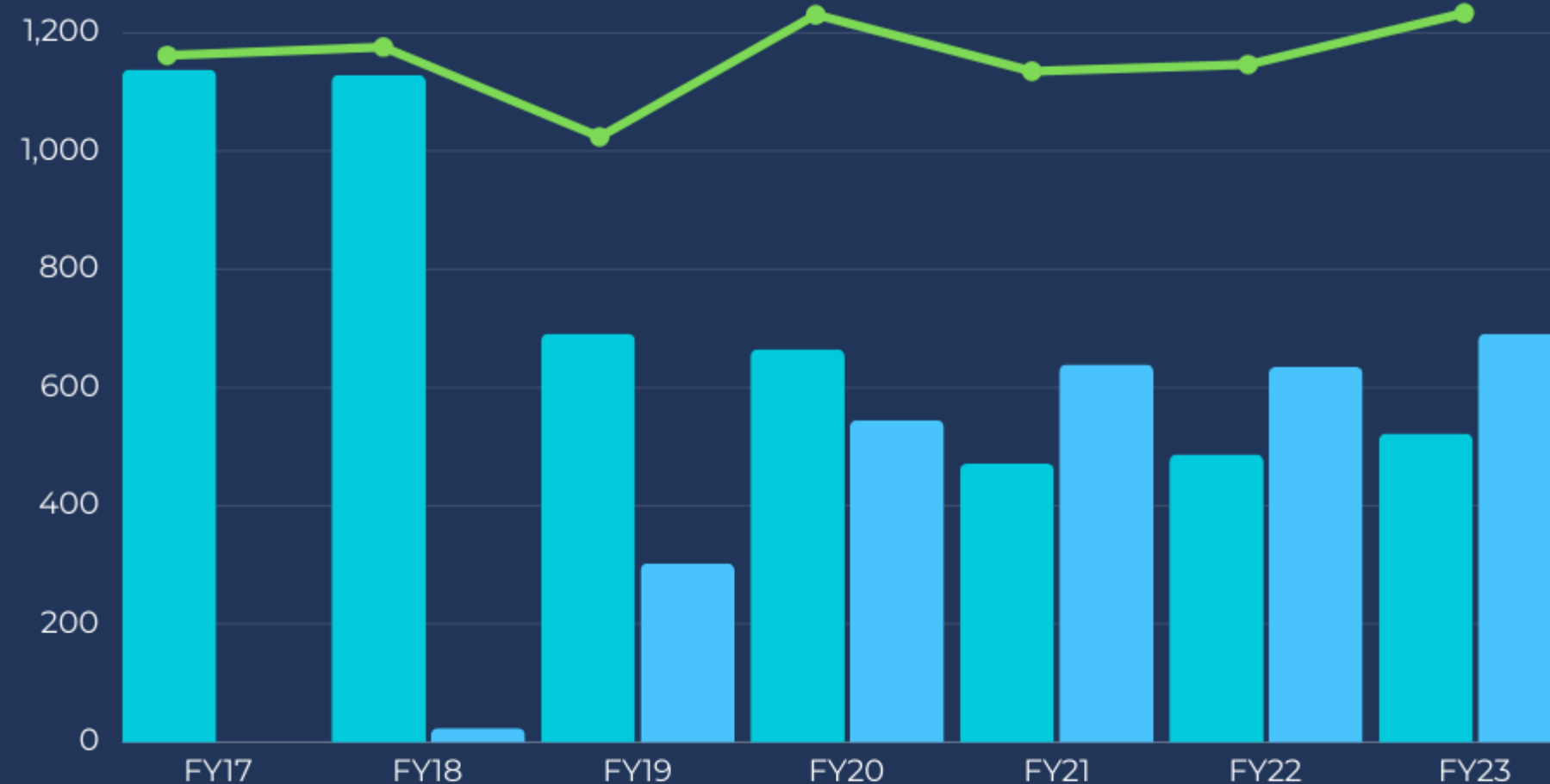
Employers who believe that the Arizona Division of Occupational Safety and Health (ADOSH) has made errors in its findings, or imposed too large of a fine for violations, after an administrative hearing at the Office of Administrative Hearings (“OAH”), pursuant to A.R.S. § 23-420 may appeal to the Review Board for relief, pursuant to A.R.S. § 23-423.

ALJ DIVISION

The Administrative Law Judge Division is the administrative tribunal of the Commission. It has jurisdiction over disputes that arise under the Arizona Workers' Compensation Act, including matters involving civil penalties for uninsured employers; the Arizona Minimum Wage Act; and matters referred from the Labor Department regarding youth employment, wage claims, and earned paid sick time.

In FY23, the ALJ Division:

- Held 5,759 workers' compensation hearings.
- Issued 4,902 written decisions.



Point of Improvement

Mediation offered by the ALJ Division requires the voluntary agreement of all interested parties and can be requested at any time.

Mediation within the ALJ Division has tripled from 19 in FY21 to 60 in FY23.

LABOR DEPARTMENT

The Industrial Commission of Arizona Labor Department is responsible for the enforcement of Arizona's payment of wage, minimum wage, earned paid sick time, and youth labor laws.

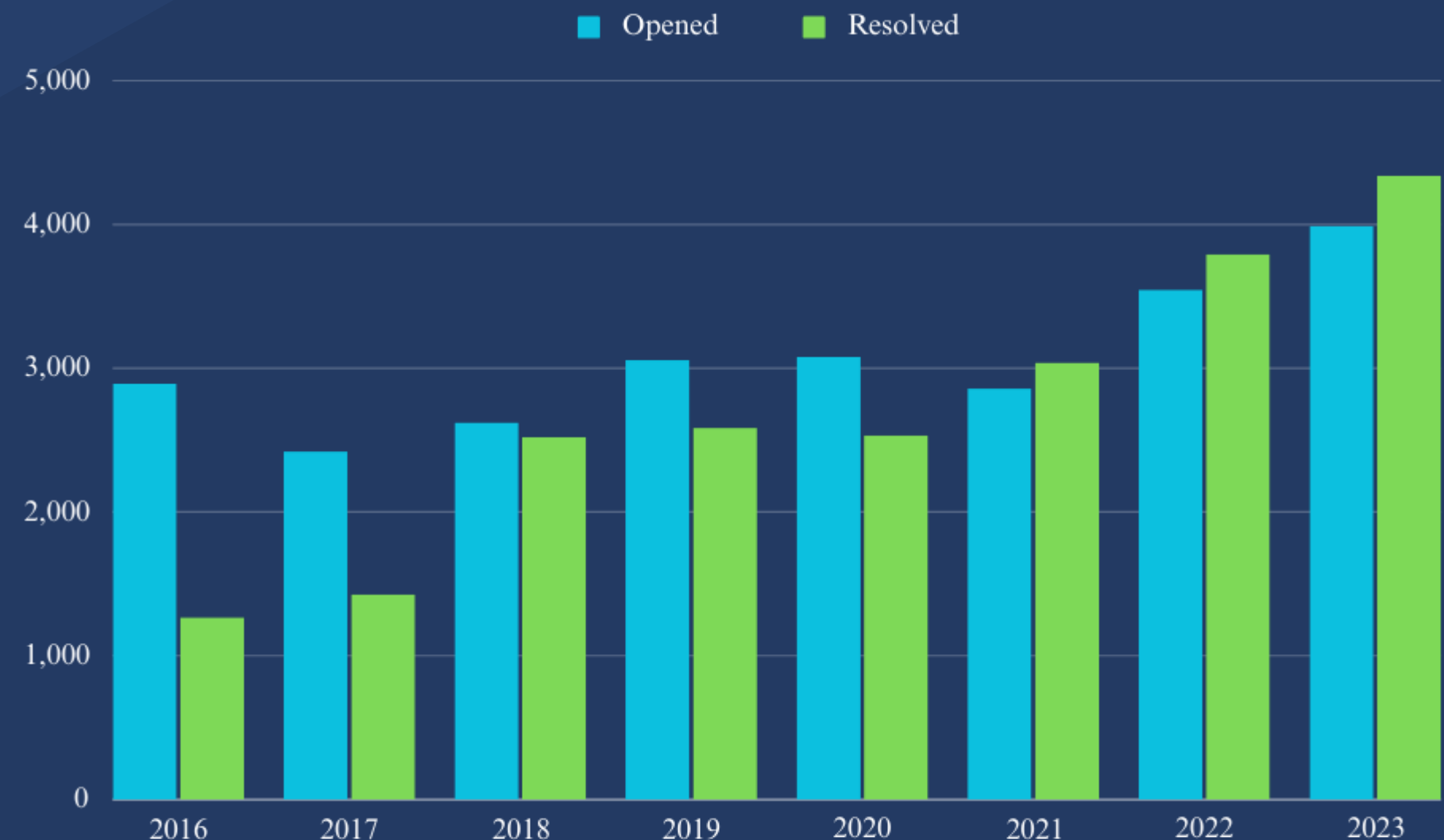
In FY23, the Labor Department:

- Received 3,989 wage claims.
- Closed 4,341 claims.
- Received 140 retaliation claims.
- Closed 131 retaliation claims.

Point of Improvement

For the past three years the Division has been able to resolve more cases than it opens.

WAGE CLAIMS OPENED AND RESOLVED (FISCAL YEAR)





THANK YOU





Arizona State Legislature

1700 West Washington
Phoenix, Arizona 85007

June 22, 2023

Director James Ashley
Industrial Commission of Arizona
800 W. Washington St.
Phoenix, AZ 85007

Dear Director James Ashley:

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the Legislature to evaluate the need to continue the existence of state agencies. During the sunset review process, an agency is reviewed by legislative committees of reference (CORs). On completion of the sunset review, the CORs recommend to continue, revise, consolidate or terminate the agency.

The Joint Legislative Audit Committee has assigned the sunset review of the Industrial Commission of Arizona to the COR comprised of members of the Senate Commerce Committee and the House of Representatives Commerce Committee.

Pursuant to A.R.S. § 41-2954, the COR is required to consider certain sunset factors in deciding whether to recommend continuance, modification or termination of an agency. Please provide your agency's response to the factors listed below:

1. The key statutory objectives and purposes in establishing the agency.
2. The agency's effectiveness and efficiency in fulfilling its key statutory objectives and purposes.
3. The extent to which the agency's key statutory objectives and purposes duplicate the objectives and purposes of other governmental agencies or private enterprises.
4. The extent to which rules adopted by the agency are consistent with the legislative mandate.
5. The extent to which the agency has provided appropriate public access to records, meetings and rulemakings, including soliciting public input in making rules and decisions.
6. The extent to which the agency timely investigated and resolved complaints that are within its jurisdiction.
7. The extent to which the level of regulation exercised by the agency is appropriate as compared to other states or best practices, or both.
8. The extent to which the agency has established safeguards against possible conflicts of interest.
9. The extent to which changes are necessary for the agency to more efficiently and effectively fulfill its key statutory objectives and purposes or to eliminate statutory responsibilities that are no longer necessary.
10. The extent to which the termination of the agency would significantly affect the public health, safety or welfare.

Additionally, please provide written responses to the following:

1. The extent to which the agency potentially creates unexpected negative consequences that may require additional review by the COR, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.
2. The extent to which the agency has addressed deficiencies in its enabling statutes.
3. The extent to which the agency has determined whether the Attorney General or any other agency in Arizona has the authority to prosecute or initiate actions.
4. The consequences of eliminating the agency or consolidating it with another agency.

Additionally, statute requires the COR to consider certain factors for each agency that administers an *occupational regulation*, which is defined as: 1) a statute, rule, practice, policy or other state law that allows an individual to use an occupational title or work in a lawful occupation; and 2) a government registration, government certification and occupational or professional license. An *occupational regulation* does not include a business license, facility license, building permit or zoning and land use regulation, except to the extent those state laws regulate an individual's personal qualification to perform a lawful occupation. If your agency falls under this category, please provide written responses to the following:

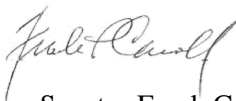
1. The extent to which the occupational regulation meets the requirements of A.R.S. § 41-3502.
2. The extent to which the failure to regulate a profession or occupation will result in:
 - a. the loss of insurance.
 - b. an impact to the ability to practice in other states or as required by federal law.
 - c. an impact to the required licensure or registration with the federal government.
 - d. the loss of constitutionally afforded practices.

Your response should be received by September 1, so that we may proceed with the sunset review and schedule the required public hearing. Please submit the requested information to:

Jason Theodorou
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Thank you for your time and cooperation. If you have any questions, please feel free to contact me at 602-926-3249 or Jason Theodorou, the Senate Commerce Committee Research Analyst, at 602-926-3171.

Sincerely,



Senator Frank Carroll
Senate Commerce Committee, Vice Chair

cc: Representative Justin Wilmeth, House Commerce Committee, Chair
Paul Benny, House Commerce Committee, Analyst



Arizona State Legislature

1700 West Washington
Phoenix, Arizona 85007

June 22, 2023

Director James Ashley
Boiler Advisory Board
800 W. Washington St.
Phoenix, AZ 85007

Dear Director James Ashley:

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the Legislature to evaluate the need to continue the existence of state agencies. During the sunset review process, an agency is reviewed by legislative committees of reference (CORs). On completion of the sunset review, the CORs recommend to continue, revise, consolidate or terminate the agency.

The Joint Legislative Audit Committee has assigned the sunset review of the Boiler Advisory Board to the COR comprised of members of the Senate Commerce Committee and the House of Representatives Commerce Committee.

Pursuant to A.R.S. § 41-2954, the COR is required to consider certain sunset factors in deciding whether to recommend continuance, modification or termination of an agency. Please provide your agency's response to the factors listed below:

1. The key statutory objectives and purposes in establishing the agency.
2. The agency's effectiveness and efficiency in fulfilling its key statutory objectives and purposes.
3. The extent to which the agency's key statutory objectives and purposes duplicate the objectives and purposes of other governmental agencies or private enterprises.
4. The extent to which rules adopted by the agency are consistent with the legislative mandate.
5. The extent to which the agency has provided appropriate public access to records, meetings and rulemakings, including soliciting public input in making rules and decisions.
6. The extent to which the agency timely investigated and resolved complaints that are within its jurisdiction.
7. The extent to which the level of regulation exercised by the agency is appropriate as compared to other states or best practices, or both.
8. The extent to which the agency has established safeguards against possible conflicts of interest.
9. The extent to which changes are necessary for the agency to more efficiently and effectively fulfill its key statutory objectives and purposes or to eliminate statutory responsibilities that are no longer necessary.
10. The extent to which the termination of the agency would significantly affect the public health, safety or welfare.

Additionally, please provide written responses to the following:

1. The extent to which the agency potentially creates unexpected negative consequences that may require additional review by the COR, including increasing the price of goods, affecting the availability of services, limiting the abilities of individuals and businesses to operate efficiently and increasing the cost of government.
2. The extent to which the agency has addressed deficiencies in its enabling statutes.
3. The extent to which the agency has determined whether the Attorney General or any other agency in Arizona has the authority to prosecute or initiate actions.
4. The consequences of eliminating the agency or consolidating it with another agency.

Additionally, statute requires the COR to consider certain factors for each agency that administers an *occupational regulation*, which is defined as: 1) a statute, rule, practice, policy or other state law that allows an individual to use an occupational title or work in a lawful occupation; and 2) a government registration, government certification and occupational or professional license. An *occupational regulation* does not include a business license, facility license, building permit or zoning and land use regulation, except to the extent those state laws regulate an individual's personal qualification to perform a lawful occupation. If your agency falls under this category, please provide written responses to the following:

1. The extent to which the occupational regulation meets the requirements of A.R.S. § 41-3502.
2. The extent to which the failure to regulate a profession or occupation will result in:
 - a. the loss of insurance.
 - b. an impact to the ability to practice in other states or as required by federal law.
 - c. an impact to the required licensure or registration with the federal government.
 - d. the loss of constitutionally afforded practices.

Your response should be received by September 1, so that we may proceed with the sunset review and schedule the required public hearing. Please submit the requested information to:

Jason Theodorou
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Thank you for your time and cooperation. If you have any questions, please feel free to contact me at 602-926-3249 or Jason Theodorou, the Senate Commerce Committee Research Analyst, at 602-926-3171.

Sincerely,



Senator Frank Carroll
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cc: Representative Justin Wilmeth, House Commerce Committee, Chair
Paul Benny, House Commerce Committee, Analyst



Arizona State Legislature

1700 West Washington
Phoenix, Arizona 85007

June 22, 2023

Director James Ashley
Occupational Safety and Health Advisory Committee
800 W. Washington St.
Phoenix, AZ 85007

Dear Director James Ashley:

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The Joint Legislative Audit Committee has assigned the sunset review of the Occupational Safety and Health Advisory Committee to the COR comprised of members of the Senate Commerce Committee and the House of Representatives Commerce Committee.

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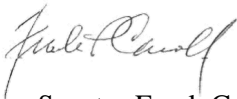
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Jason Theodorou
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

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Arizona State Legislature

1700 West Washington
Phoenix, Arizona 85007

June 22, 2023

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Occupational Safety and Health Review Board
800 W. Washington St.
Phoenix, AZ 85007

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Sincerely,



Senator Frank Carroll
Senate Commerce Committee, Vice Chair

cc: Representative Justin Wilmeth, House Commerce Committee, Chair
Paul Benny, House Commerce Committee, Analyst



THE INDUSTRIAL
COMMISSION OF ARIZONA
AND RELATED ADVISORY/REVIEW BOARDS
REVIEW OF SUNSET FACTORS
2023



AUGUST 2023

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- B. Industrial Commission of Arizona Agency Organization and Staffing Levels
- C. Industrial Commission of Arizona Claims Manual, Table of Contents
- D. Online Workers' Compensation Coverage Verification Service
- E. Summary of Workers' Compensation Statutory Changes, 1970 to Present
- F. U.S. Department of Labor, Bureau of Labor Statistics, Fatality Rates
- G. Federal OSHA Affirmation of Arizona State Plan in the Federal Register
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INTRODUCTION

The Industrial Commission of Arizona (“ICA” or “Commission”) is a regulatory agency that was created in 1925 as a result of legislation implementing Article 18, Section 8, of the Arizona Constitution establishing a workers’ compensation system. From 1925 to 1969, the workers’ compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers, which generally were mining and railroad companies. In 1969 the workers’ compensation system was reorganized and expanded to include private insurance companies. The State Compensation Fund was split from the Commission and established as a separate agency responsible for providing workers’ compensation insurance¹. The Commission retained its responsibility as the file of record and its regulatory authority over the processing of workers’ compensation claims. Since that time, the role of the Commission has been expanded to cover other labor related issues, including the enforcement of occupational safety and health standards in all public and private sector workplaces in Arizona,² enforcement of youth employment and wage laws (including the state minimum wage and earned paid sick time), administration and payment of vocational rehabilitation benefits to qualified injured workers, and workers’ compensation benefits to injured workers of uninsured employers and bankrupt self-insured employers.

The policy setting body for the ICA is a five member Commission whose members are appointed by the Governor and confirmed by the Senate to staggered five year terms. The Commissioners meet on a

¹ The State Compensation Fund became a private mutual insurance company in fiscal year 2014 and is now known as CopperPoint Mutual Insurance Company.

² The Arizona State Plan does not apply to federal government workers and areas under exclusive federal jurisdiction, which includes employment on Native American Tribal Lands, copper smelters, and concrete and asphalt batch plants that are physically located within mine property.

regular basis, and in addition to setting policy for the Commission, perform a variety of other statutorily mandated functions, which are described throughout this document³.

Commission meetings, except for Executive Sessions, are open to the public and subject to the open meeting laws. The time and location of each meeting are published in a combined notice and agenda for that meeting. The Notice and Agenda are published at least 24 hours in advance of each meeting and are available for download on the Commission's website at <https://www.azica.gov/>. Minutes are kept of each meeting and are also available for download on this website.

The current members of the Commission are:

Dennis P. Kavanaugh, Chairman
Joseph M. Hennelly, Jr., Vice Chair
Scott P. LeMarr, Commissioner
D. Alan Everett, Commissioner
Maria Cecilia Valdez, Commissioner

The Commission is a self-supporting, non-general fund agency whose operations and other statutorily mandated functions are funded through an annual assessment on workers' compensation premiums⁴. The Commission's Administrative Fund is established under A.R.S. § 23-1081(A) to provide for all expenses in carrying out the Commission's powers and duties under Title 23. The Commission's Special Fund is established under A.R.S. § 23-1065(A) and provides statutorily mandated services, which are described in this document. The Commission has the authority to levy assessments under A.R.S. §§ 23- 961(G), 23-1065(A), 23-1065(F), and 23-1081(A) for these two funds, and the assessment rates are established annually by action of the Commissioners.

Due to administrative efficiencies and strong fiscal management, the Commission is proud to report that assessment rates continue to be set among the lowest levels in 26 years. Set below the 3.0% statutory maximum, the assessment rate for the Administrative Fund is 2% for calendar year 2023. Also set below the 2.5% statutory maximum, the assessment rate for the Special Fund was 0% for calendar year 2023. See Appendix A for a history of these assessment rates.

The Commission has an operational budget of approximately \$21,985,500 and oversees an Agency with 236 FTEs, including 36.4 Federally funded FTEs. An organizational chart of the Divisions and brief description of staffing levels is attached as Appendix B.

³ Commissioners receive per diem per A.R.S. § 23-101(C). See Appendix H

⁴ In 2021, A.R.S. § 23-1702(A) was enacted establishing a Municipal Firefighter Cancer Reimbursement Fund (MFCRF) and, as a result, the Commission now receives an appropriation of \$84,700.00 from the General Fund to cover the Commission's administrative costs associated with the MFCRF.

SUNSET FACTOR ANALYSIS OF THE INDUSTRIAL COMMISSION

1. THE KEY STATUTORY OBJECTIVES AND PURPOSES IN ESTABLISHING THE AGENCY.

The Commission was established to “administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.” A.R.S. § 23-107(A)(2). Under A.R.S. § 23-107, the Commission was also given the full power, jurisdiction and authority to:

1. Act as a regulatory agency ensuring that workers’ compensation claims are processed in accordance with the provisions of Chapter 6 of A.R.S. Title 23;
2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees;
3. Conduct an investigation upon petition of any person that any employment is not safe or injurious to the welfare of any employee;
4. Promote the voluntary arbitration, mediation, and conciliation of disputes;
5. Collect, collate, and publish statistical and other information relating to employees, employers and places of employment; and
6. Formulate and adopt rules and regulations for affecting the purposes of Arizona Revised Statutes, Chapter 1, Article 1.

Consistent with its general powers and duties, the role of the Commission has expanded over the years to include the administration and enforcement of other laws “for the protection of life, health, safety and welfare of employees.” Most notably, in 1969, the Special Fund was established to serve as the “safety net” for the Arizona Workers’ compensation system by providing workers’ compensation benefits in statutorily mandated areas. Additionally, in 1974, Governor Jack Williams asserted Arizona’s right under the Federal Occupational Safety and Health Act to retain jurisdiction over occupational safety and health issues within Arizona. At that time, Arizona’s State Occupational Safety and Health plan was given initial plan approval from the U.S. Department of Labor’s Occupational Safety and Health Administration (“Federal OSHA”), and the Arizona Division of Occupational Safety and Health (“ADOSH”) was designated as the state entity responsible for administering the State plan. Federal OSHA granted Arizona final approval and exclusive jurisdiction effective June 20, 1985. The Arizona State OSHA plan, which is found in Title 23, Chapter 2 Article 10, retains its federal approval as long as it remains “at least as effective as” the federal program.

Other laws enforced by the Commission are found in the following Title 23 Arizona Revised Statutes:

Chapter 2, Article 3: Youth Employment

Chapter 2, Article 7: Payment of Wages

Chapter 2, Article 8: Minimum Wage

Chapter 2, Article 8.1: Earned Paid Sick Time

Chapter 2, Article 11: Safety Conditions for Boilers and Lined Hot Water Storage Heaters

Chapter 2, Article 12: Safety Conditions for Elevators and Similar Conveyances

Chapter 6, Articles 1 through 12: Workers' Compensation Act

2. THE AGENCY'S EFFECTIVENESS AND EFFICIENCY IN FULFILLING ITS KEY STATUTORY OBJECTIVES AND PURPOSES.

The Commission performs its statutory duties and responsibilities through its five member Commission and the agency divisions:

- Commissioners: In addition to setting policy and monitoring effective implementation of that policy, the Commissioners also perform a variety of other statutorily mandated functions that relate to the different programs of the Commission.
- Claims Division: This Division plays a key role in the regulation of the workers' compensation industry to ensure that workers' compensation claims are processed in compliance with the Arizona workers' compensation laws. This Division also maintains the official record for all Arizona workers' compensation claims, is actively involved in the processing of Arizona workers' compensation claims, and provides training and instruction to system participants.
- Special Fund Division: Serving as the safety net for the Arizona Workers' compensation system, the Special Fund is a "trust fund" that was legislatively created in 1969 for the express purpose of providing workers' compensation benefits in statutorily mandated areas, including indemnity payments to injured workers, medical benefits, and vocational rehabilitation.

- Arizona Division of Occupational Safety and Health (“ADOSH”): ADOSH enforces occupational safety and health standards in all public and private sector workplaces in Arizona⁵, provides free safety consultation, education and training services to both Arizona employers and employees, and oversees voluntary recognition programs for employers who employ best practices in safety. ADOSH also investigates Whistleblower Discrimination complaints, performs elevator inspections, and certifies private boiler inspectors.
- Administrative Law Judge Division (“ALJ”): The ALJ Division is the administrative tribunal of the Commission with jurisdiction over disputes that arise under the Arizona Workers’ Compensation Act, minimum wage laws, earned paid sick time laws, and youth employment laws.
- State Labor Department: This Department is responsible for the enforcement of Arizona’s payment of wages, minimum wage laws, earned paid sick time and retaliation laws, and youth employment laws.
- Legal Division: In addition to providing in-house legal support to the agency, this division also oversees enforcement of the law requiring that employers provide workers’ compensation insurance to their employees.
- Ombudsman’s Office: This office assists injured workers by providing information about the workers' compensation system and rules governing Commission proceedings and may assist in clarifying the methods used to determine a person's workers' compensation benefits.
- Administration Division: Consisting of several operational sections (Accounting, Management Information Services [MIS], Human Resources, Medical Resource Office [MRO], Special Services, and Office of the Director), in addition to providing support to the Commission to ensure its efficient and effective operation, several sections play key roles in the performance of statutory duties and responsibilities, including the licensing of self-insured employers, the setting of assessment rates, and establishing annual updates for the Physicians’ and Pharmaceutical Fee Schedule.

Agencywide IT modernization

In order to maximize efficiency and provide the best service to the public and a stable, intuitive and cloud-based user experience, the Commission launched a modernization initiative in 2017 to implement Salesforce solutions throughout the divisions of the agency. Salesforce is a software as a service (SaaS) platform and is aligned with the State’s Cloud-First strategy.

⁵ The Arizona State Plan does not apply to federal government workers and areas under exclusive federal jurisdiction, which includes employment on Native American Tribal Lands, copper smelters, and concrete and asphalt batch plants that are physically located within mine property.

Over the last 6 years, Salesforce has been implemented in the following divisions: Claims, Administrative Law Judge (ALJ), and Accounting/Finance in the first phase and Legal, Labor, and ADOSH Compliance, Compliance Assistance, Whistleblower, Consultation, Elevators and Boilers in the second phase. This implementation replaced outdated technology including 30 year old legacy mainframe applications, many legacy applications and paper processing. Case management functionality and task-based processing has provided employees with better workload tracking, automated documents and improved efficiency. The Salesforce processes are integrated through Mulesoft with other 3rd party softwares in order to provide a fully automated solution. Documents are created and signed through Nintex and Adobe Sign, delivered through Sharetru for SFTP, OpenText for fax, and Pitney Bowes for centralized mailing and ultimately saved to a document management solution of either Viewcenter or Box.com. Viewcenter has been moved to AWS as a part of the Cloud-First initiative. By having a single solution for all divisions, information is held in one application and can easily be shared and reported. Salesforce is a FedRAMP certified, secure solution which is scalable and supportable by internal users and partners.

Portals have also been implemented to provide the best user experience to ICA's interested parties. The ICA supports 4 portal solutions: ICA Community, ADOSH VPP portal, ADOSH Elevator Inspector portal and the ICA Experience. The ICA Community offers claimants, employers, carriers and attorneys the ability to view documents in claims and ALJ cases, submit claim webforms, upload documents, submit cancer claim reporting, MFCR reimbursement requests and quarterly and annual tax filings. The ADOSH VPP portal allows Employers to submit their VPP annual reports. The ADOSH Elevator Inspection portal allows inspectors the ability to assign inspections to themselves and submit completed inspection reports back to the ICA. The ICA Experience is an internal portal allowing all users at the Commission the ability to access standard work documentation and request inventory asset assignment to employees. All of these solutions are configurable to enhance functionality as the need arises for Community users.

By implementing Salesforce, the ICA has ensured the security, stability and performance of business-critical applications, while reducing complexity and risk.

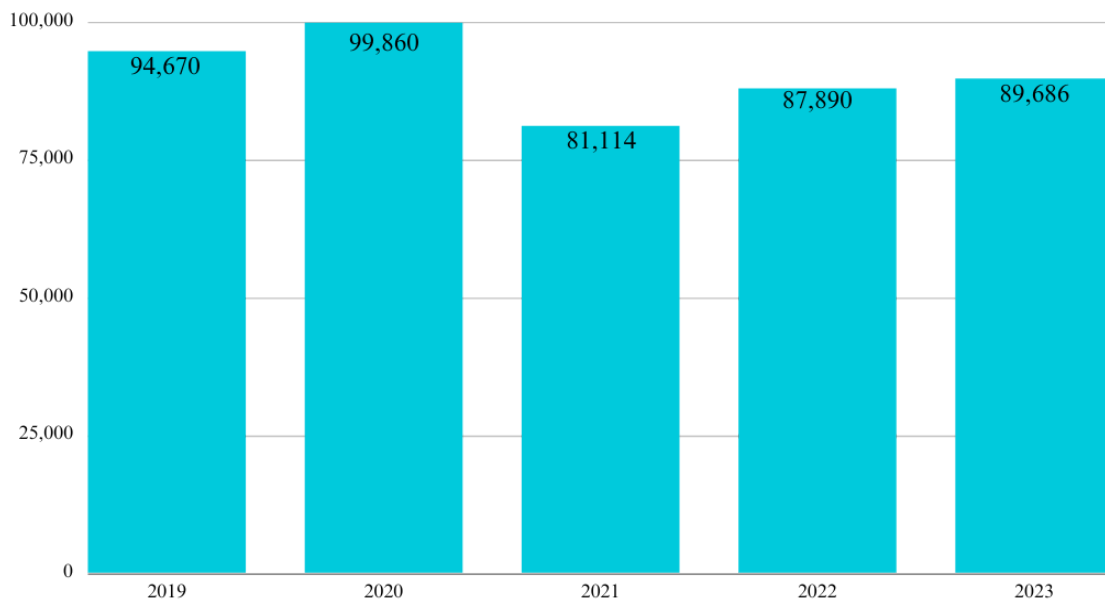
A. Administration of the Workers' Compensation System

While all participants in the workers' compensation system play an important role, effective administration by the Commission is critical to the overall success of the system. Effective administration by the Commission includes a combination and balance of ensuring that system participants understand their rights and responsibilities under the law, ensuring that system participants follow the law, and ensuring that the Commission fulfills its own statutory duties and responsibilities critical to the processing of workers' compensation claims. These functions rest primarily with the Commission's Claims Division.

Since 1925, the Industrial Commission has been the file of record for all Arizona workers' compensation claims. To date, the Commission maintains records for over 7.8 million workers' compensation claims files, which translates to over 50 million documents.

Through its Claims Division, the Commission is actively involved in the processing of Arizona workers' compensation claims to ensure insurance carriers, third party adjusting agents, and self-insured employers ("payers") are processing workers' compensation claims in accordance with Arizona law. This includes notifying the appropriate payer of any claim received by the Claims Division from an attending physician or injured worker, reviewing claim processing actions for statutory compliance, setting the injured worker's average monthly wage for purposes of the claim, establishing unscheduled permanent disability awards, awards for facial scarring and loss of teeth, as well as processing requests to leave the state, requests to change physicians, and allegations of bad faith.

**NUMBER OF WORKERS' COMPENSATION CLAIMS FILED
(FISCAL YEAR)**



Claim Notification: The Commission is responsible for notifying the appropriate payer of each workers' compensation claim that is filed with the Claims Division. This critical notification is done so that the payer can begin processing of the claim. In FY23, the Claims Division:

- Notified 61,680 workers' compensation claims within 20 days or less.

Review Claim Processing for Statutory Compliance: Under A.R.S. § 23-1061(F), workers' compensation insurance carriers and self-insured employers are required to report key claim information to the Commission and the injured worker. This information, which relates to the status of the injured workers' claim or entitlement to benefits, is communicated in writing on forms (notices) approved by the Commission. The active involvement of the Claims Division includes reviewing all notices filed with the Commission, and where necessary, taking action to solicit

corrected notices. Such notices include Notices of Claims status, Notices of Supportive Care, Notices of Suspension of Benefits, Notices of Permanent Disability or Death Benefits, and Notices of Permanent Disability and Request for Determination of Benefits. In FY23, the Claims Division:

- Reviewed 52,781 notices.
- Solicited action by the issuing party to correct errors or omissions in 15,579 notices.

The Claims Division also issues awards and orders in workers' compensation claims. Numbering in the thousands per year, these determinations directly impact the benefits that are received by injured workers and include establishing a worker's average monthly wage, determinations of unscheduled permanent disability awards, awards for facial scarring and loss of teeth, processing requests to leave the state and requests to change physicians, investigating allegations that an injured worker is not receiving the benefits that they are entitled to receive, and investigating administrative complaints of bad faith or unfair claims processing practices.

Average Monthly Wage Awards: These awards are issued by the Claims Division under the authority of A.R.S. § 23-1061(F) and A.R.S. § 23-1041. In all cases where compensation is payable, the Claims Division reviews the information submitted by the parties and makes an independent determination regarding the setting of the average monthly wage for the injured worker. The Commission is required to issue its independent determination after receiving notice that a "first payment of compensation" has been made to the injured worker. In FY23, the Claims Division:

- Issued 13,815 Average Monthly Wage awards. The average time to issue these awards was 108 days or less.

Unscheduled Permanent Disability Awards ("LEC Awards"): When an injured worker has been medically discharged and rated with an unscheduled permanent impairment, the Commission has the responsibility under A.R.S. § 23-1044 to determine what effect, if any, the injury or combination of injuries has on the injured workers' earning capacity. By statute, the Commission is required to issue Loss of Earning Capacity (LEC) awards no later than 90 days after receipt of a notice requesting this determination. In FY23, the Claims Division:

- Issued over 1,770 LEC awards. The average days to decision was 35 days.

Facial Scarring And Loss Of Teeth Awards: Awards for facial disfigurement (not resulting in a functional impairment) and loss of teeth are issued by the Claims Division under A.R.S. § 23-1044(B)(22). In FY23, the Claims Division:

- Issued 122 awards in 7 days or less.

Requests to Leave the State: An injured worker may not leave the state for a period exceeding two weeks, while the necessity of having active medical treatment continues, without the written

approval of the Commission. A.R.S. § 23-1071(A) and A.A.C. R20-5-115. In FY23, the Claims Division:

- Processed 272 requests to leave the state in 10 days or less.

Requests to Change Physicians: An injured worker may not change their treating physician without permission of the insurance carrier, physician or Commission. A.R.S. § 23-1071(B). If any interested party petitions the Commission for a change of physician, the Claims Division will issue an award acting on the request. In FY23, the Claims Division:

- Processed 1,655 requests to change doctors in 10 days or less.

Petitions for Rearrangement: Upon a change in the physical condition or earning capacity of an injured worker, an interested party may file a petition to rearrange or adjust the injured workers' LEC award. Under A.R.S. § 23-1044(F), the Claims Division will determine whether there has been a change in the injured worker's earning capacity and issue the appropriate award. In FY23, the Claims Division:

- Issued 143 Petitions for Rearrangement in 46 days or less.

Administrative Bad Faith and Unfair Claims Processing Practices: The Commission is given the statutory authority to investigate administrative complaints of bad faith and unfair claims processing practices. A.R.S. § 23-930. If the Commission finds that bad faith or unfair claims processing practices has occurred in the handling of a particular claim, the applicable statute mandates the Commission award the injured worker, in addition to any benefits it finds are due and owing, a benefit penalty of 25% of the benefit amount ordered to be paid or \$500, whichever is greater. A.R.S. § 23-930(B). If the Commission finds a history or pattern of repeated bad faith or unfair claims processing practices, then it may impose a civil penalty of up to \$1,000 for each violation found (which is required to be deposited in the general fund). A.R.S. § 23-930(C). In FY23, the Commission:

- Investigated 67 external complaints of bad faith/unfair claims processing practices, with the following administrative outcomes: 59 complaints were denied, 8 complaints were deemed valid.

Assistance, Training and Instruction Provided: The ultimate goal of the workers' compensation system is to provide workers' compensation benefits to injured workers and their families as quickly and efficiently as possible. Everyone in the system plays an important role in fulfillment of this goal. Originally intended to be a system that could be easily navigated by unrepresented injured workers, the workers' compensation system has grown increasingly more complex and challenging. Adding to this complexity is that claims processing is being performed with more frequency by individuals who may lack an in-depth understanding and knowledge of Arizona workers' compensation law because they are processing claims in multiple states, all of which have unique

laws and processes. One of the most important roles of the Commission is to ensure that injured workers and other system participants understand the law and processes of the Arizona workers' compensation system, and their respective rights, duties and obligations within the system. The Commission dedicates significant resources to this important responsibility.

- Office of the Ombudsman. Established under A.R.S. § 23-110, this office provides information and assistance to injured workers to ensure they understand the Arizona workers' compensation system and processes. In FY23, this office was expanded from one to four employees to more effectively fulfill its mission serving agency customers.
- Annual Claims Seminar. Every year the Commission conducts a two day seminar that provides training on workers' compensation issues, laws, and claims processing. In FY23, there were 471 total attendees with approximately 30% from out-of-state.⁶ The Seminar continued uninterrupted by moving the event remotely through the pandemic in 2020 and 2021.
- Publication of a Claims Manual. In connection with the Annual Claims Seminar, the Commission publishes a manual that provides in-depth guidance, along with "practice alerts" on the processing of workers' compensation claims in Arizona. See Appendix C for the Manual's Table of Contents.
- Webinars. The Claims Division provides claims processing training through regularly scheduled webinars. In FY23, the Claims Division held 9 webinars, providing training to 603 individuals.
- Online Resources for Employees, Employers, Carriers and Medical Providers. The Commission's website provides extensive online resources to assist system participants in understanding or participating in the workers' compensation system, including instructional videos for injured workers and payers, downloadable instructional booklets or FAQs, and forms. See the Commission's website at www.azica.gov.
- Community Outreach. In 2022, the Claims Division launched a targeted claims training initiative. Using system analytics, the Claims Division drove proactive compliance improvement efforts to reduce the number of ICA initiated bad faith/unfair claims processing practices. In FY23, the Claims Division conducted 13 webinars for 452 registered adjusters.
- Written Notification of Available Resources. Every injured worker who files a workers' compensation claim receives a letter from the Commission letting them know of the resources that are available to assist them. In FY23, the Commission sent 181,117 letters to injured workers.

⁶ Completion of training from the Claims Division (in-person or by webinar) is required for individuals who are processing claims at an out-of-state office. A.A.C. R20-5-130(B).

In the last five years, the Claims Division has improved its operational efficiencies:

- Launched in March 2019, the Claims Division now operates from a new Salesforce based operating system which boasts smart workflows, is adaptable and provides advanced analytics. This system sunsetted an over 30 year old unsupported COBOL MS-DOS system. The Salesforce system has been improved steadily since its launch to improve quality and operational efficiency.
- The online Community portal provides advanced features to meet customer needs. Some highlights include fillable web forms which submit directly to the claims file without the expense and time delays for indexing, ability to upload documents, prompt access to view claims files, one-step claim access for legal representation, ability to change preferred communication methods by authorized administrative users, ability to zip and merge entire claim files, and view litigation files and the hearing calendar.
- Community Portal enhanced in compliance with A.R.S. § 23-1061(N), intent to file reporting. This portal allows self-insured employers/carriers to report a potential workers compensation claim and upload proof of intent to file. In response, the Claims Division mails a letter to the injured worker informing them on how to file a claim. In FY23, 3,864 letters were sent to the potential injured worker in accordance with the new statute.
- The Claims Division provides a claims adjusting manual to assist the attorney and carrier/self-insured community handle claims correctly and in compliance with the law. This manual is published in conjunction with the annual claims seminar. The manual was fully re-written and reformatted in 2018 and has been substantially improved every year. This resource is now available free of charge on the ICA website in addition to physical copies which can be purchased at cost.
- Developing a centralized mailing operation focused on E-Fax, Email Service, SFTP and U.S Mail. Electronic methods require zero touches and U.S Mail requires only one touch, monitored by one staff member daily. The previous system required over fifteen touches for each piece of mail and several dedicated staff members completing the certifications, sorting and processing the mail.
- Significantly streamlined the Loss of Earning Capacity process with no reduction in the quality of the determination. Created streamlined templates and improved internal processes have resulted in a sustained reduction from over 90 days to 46 days or less. The team achieved an average of 35 days to decision in FY23.
- Streamlined the new claim creation and notification process, creating and launching multiple incremental improvements resulting in innovative matching rules to automatically create new

claims, prevent duplicate claims, and increase matching to National Council on Compensation Insurance policy information for more accurate new claim notifications. These improvements decrease the wait time for all parties to begin investigation, expedite the due date for the first payment to the injured worker, and reduce error rates.

- A new Auditing, Compliance and Training team has been formed to provide technical and analytical support for the division. This team focuses on an audit program, analytical studies to drive proactive carrier & self-insured employer compliance, dedicated system analysis to improve operational efficiency and effectiveness, and manages the external and internal training programs.

Approval of Authority to Self-Insure for Workers' Compensation: Administration of the Arizona worker's compensation system also includes the administration of the self-insured employer program. Under A.R.S. § 23-961, the Commission is given the authority to license and regulate employers that are or wish to become self-insured for workers' compensation insurance. While other powers and duties of the Commission may be delegated to other Commission staff, the licensing of self-insured employers is deemed a non-delegable duty of the Commissioners under A.R.S. § 23-108.01. There are currently 76 self-insured employers, each of whom is required to submit updated information for consideration and action by the Commission for annual renewal of their self-insurance authority. The Commission performs a comprehensive review and analysis of the self-insured workers' compensation claims and financial information before renewal of authority to self-insure is granted.

Medical Resource Office

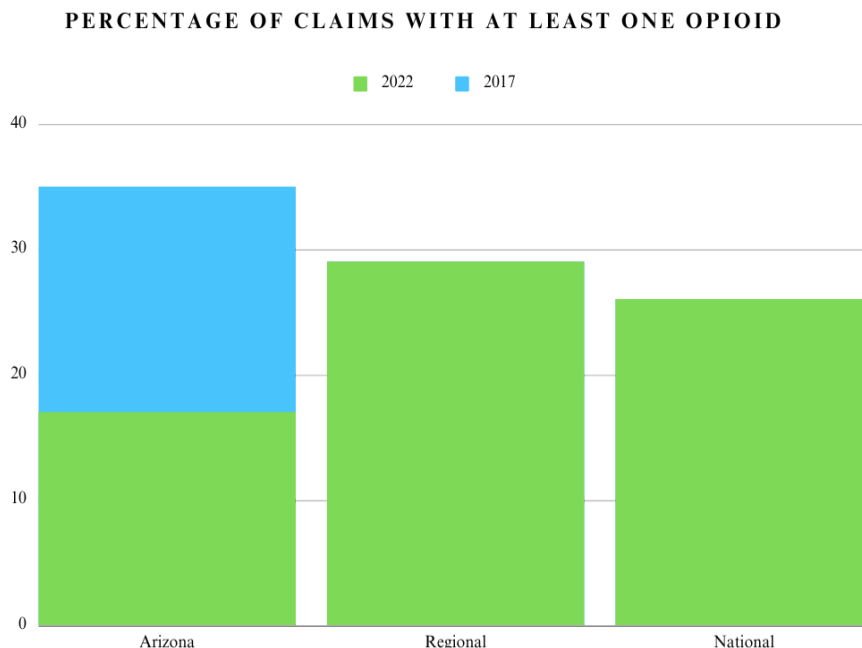
The Medical Resource Office maintains and annually updates the Arizona Workers' Compensation Physicians' and Pharmaceutical Fee Schedule in accordance with A.R.S. § 23-908(B). The office provides guidance on the Evidence Based Medicine Treatment Guidelines published in Title 20, Chapter 5, Article 13 of the Arizona Administrative Code. The office administers peer review requests which includes determining if the service is available, communicating with the involved parties, and ultimately sending the request along with the appropriate documentation to the contractor who provides the peer review services. The office recently implemented an informal payment dispute resolution program to impartially assist stakeholders when a party believes that reimbursement for healthcare services was not appropriately provided. The office responds to multiple stakeholder questions, provides training, both in-person and virtually, that covers the fee schedule and treatment guidelines, and assists stakeholders with resources and materials that ultimately improve the healthcare quality of the Arizona Workers' Compensation System.

Setting of Fees Under the Arizona Physicians' and Pharmaceutical Fee Schedule ("Fee Schedule"): Under A.R.S. § 23-908(B), the Commission is required to "fix a schedule of fees to be charged by physicians, physical therapists or occupational therapists attending injured employees," and "for prescription medicines required to treat an injured employee." The Commission is required

by statute to review this schedule of fees on an annual basis. This review process is complex and requires an understanding of medical CPT⁷ codes, medical procedures, and medical coding and billing procedures. The public is afforded extensive opportunity to participate in the process outlined in A.R.S. §23-908(C). Every year the Commission publishes on its website a written analysis of issues along with staff recommendations for the Fee Schedule. This document is intended to serve as a foundational document for public comment and future discussions that may arise during the interactive stakeholder meeting and public hearing process. The Fee Schedule is posted on the Commission's website 30 days before a public hearing is held. Written comments are welcomed in advance of the public hearing and accepted until 10 days after the public hearing. Thereafter, at a later duly noticed public meeting, the Commissioners take official action on the Fee Schedule, which is incorporated in the Fee Schedule to become effective October 1st of that year. The process, from beginning to end, is open, transparent, and engages stakeholders. This is an area that sees significant public comment each year.

Because access to quality medical care and workers' compensation medical costs are impacted by the fees that are paid under the Fee Schedule (which accounted for 46% of medical benefits paid in the system in 2021),⁸ the Commission works closely with its stakeholders to address their issues, while striving to find that balance between setting fees too high (which minimizes cost savings) and setting fees too low (which create access to care issues and potential unintended consequences that negate cost savings). In the last several years the Commission implemented changes addressing the methodology used to calculate proposed reimbursement rates, reviewing all codes (over 10,000 codes) utilizing a Resource Based Relative Value Scale (RBRVS), and updating the Fee Schedule to adopt changes to the most recent CPT edition.

The median time until the first treatment for physical and general medicine is much lower in Arizona as compared to the region and the nation. The median time in days for Arizona is 8 days while the median in the region is 18 days and the median nationwide is



⁷ Current Procedural Terminology. CPT® is a registered trademark of the American Medical Association.

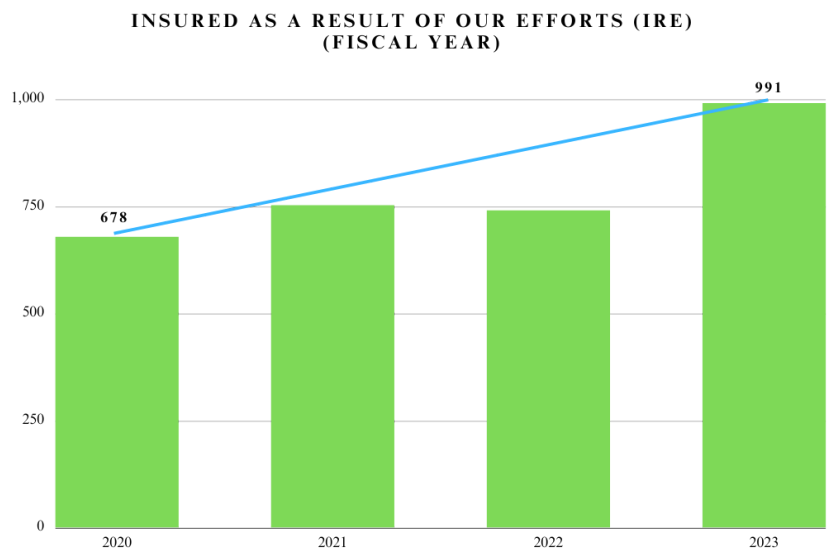
⁸ The Fee Schedule does not apply to fees charged by hospitals or outpatient surgery facilities, or the costs of ambulance services, prosthetics, orthotics, and supplies when used outside a physician's office. The fees associated with these services or categories accounted for 54% of the medical benefits paid in the system in 2021. See 2022 Arizona Medical Call Data Report, NCCI.

23 days. Arizona also dispenses fewer opioids as compared to the region and the nation. 12% of medications dispensed in Arizona were opioids as compared to 14% in the region and nationwide. Physicians write fewer prescriptions in Arizona for opioids as well. 17% of prescriptions were for opioids in Arizona as compared to 21% in the region and 20% nationwide. Arizona uses fewer opioids based on prescription claim distribution. 17% of claims with a prescription were for opioids compared with 29% regionally and 26% nationwide. Additionally, the percentage of claims with at least one opioid has decreased from 35% in 2017 to 17% in 2021⁹.

Enforcement of Law Requiring Insurance: The Commission has authority under A.R.S. § 23-907 to enforce the law requiring that employers provide workers’ compensation insurance to their employees. This is an important responsibility since the workers’ compensation claims of uninsured employers are paid by the Special Fund, which is funded through an assessment on workers’ compensation insurance premiums. Reducing uninsured claims reduces the liability of the Special Fund. A variety of sources notify the Commission of employers who may be violating Arizona law by not providing workers’ compensation coverage for their employees. Additionally, through the establishment of emphasis programs, the Commission seeks to proactively identify uninsured employers. Through its Legal Division, the Commission investigates employers, educates employers, and initiates civil penalties against uninsured employers. To improve its proactive efforts to identify uninsured employers the Legal Division and Claims Division use insurance coverage information from the National Council on Compensation Insurance¹⁰ coverage database to identify employers whose insurance coverage has lapsed and was not subsequently reinstated. This tool allows the Legal Division to utilize its resources more efficiently and results in fewer uninsured employers.

In FY23, the Legal Division:

- Received 1,309 compliance referrals.
- Identified 27 employers as being insured.
- Identified 1,282 employers as being uninsured.
- Confirmed that 991 employers obtained insurance after being contacted by the Commission.



⁹ 2022 NCCI Supplemental Opioid Report for Arizona tracking 2021 data

¹⁰ The National Council on Compensation Insurance is the “statewide” rating organization under A.R.S. § 20-341 et. seq. NCCI maintains a database of Arizona workers’ compensation policy information.

- Closed 262 files because the employer was not required to have insurance (e.g. no employees, out of business, or unable to locate).
- Issued 24 civil penalties (in the amount of \$40,000).
- Initiated 3 injunction actions.

Additionally, to assist the public in identifying whether an employer is insured for workers' compensation, the Commission provides an online insurance verification service (through NCCI). 107,482 searches were performed using this service in FY23.

B. Administration of Special Fund Benefits

Serving as the safety net for the Arizona workers' compensation system, the Special Fund is a "trust fund" that was legislatively created in 1969 for the express purpose of providing workers' compensation benefits in the following areas:

- Providing benefits under A.R.S. § 23-907 to employees injured while working for an "uninsured employer."
- Continuing workers' compensation benefits for injured workers of bankrupt self-insured employers under A.R.S. § 23-966.¹¹
- Reimbursing insurance carriers and self-insured employers for partial coverage of workers' compensation benefits for second injury claims ("apportionment claims") under A.R.S. § 23-1065.
- Providing vocational rehabilitation benefits to qualified injured workers under A.R.S. § 23-1065.
- Continuing medical benefits for pre-1973 workers' compensation claims.

The Special Fund consists of monies from Special Fund assessments, property and securities acquired by the use of monies in the Fund, interest earned on monies in the Fund, and other monies derived from the sale, use or lease of property belonging to the Fund. Effective August 12, 2005, unexpended Administrative Fund revenue surplus may be transferred to the Special Fund when the Special Fund is not actuarially sound. A.R.S. § 23-1081(B). The financial integrity of the Special Fund is overseen by a legislatively created Investment Committee that was established in 1984 under A.R.S. § 23-1065.

¹¹ Effective June 30, 2015, liability for insolvent insurance claims was transferred from the Special Fund to the Arizona Property and Casualty Insurance Guaranty Fund under the Department of Insurance and Financial Institutions. Liability for bankrupt self-insured employers remains with the Special Fund.

Special Fund Assessment Rate and Revenue: The maximum assessment rate allowed under the applicable statutes is 1.5%. The assessment rate for the Special Fund is 0.00% for the 2023 calendar year. This rate includes the 0.00% assessment authorized under A.R.S. §23-1065(A) and 0.00% assessment authorized under A.R.S. §23-1065(F).

As of June 30, 2022, the Special Fund had an actuarial surplus estimated at \$129.6 million and was deemed actuarially sound with an 80% confidence level. All claimant accounts covered by the Special Fund are actuarially evaluated on an annual basis to determine if sufficient funds have been set aside to provide for the claimant's benefits as required by A.R.S. § 23-1065(I).

Special Fund revenue generated for year ending June 30, 2022:

- \$2.2 million in Special Fund settlements & liquidations
- \$7.2 million in Special Fund interest and dividends
- \$2.7 million in Special Fund building rental income
- \$0 workers' compensation taxes assessed due to strength of the Special Fund

Special Fund total liabilities as of June 30, 2022:

- \$218.8 million

Special Fund total assets as of June 30, 2022:

- \$384.4 million

Processing and Payment of Benefits for No Insurance Claims: The Special Fund is responsible for providing workers' compensation benefits to injured workers whose employers have not provided workers' compensation insurance. These workers' compensation claims are called "no insurance claims" and are notified to the Special Fund from the Claims Division. If the claim is accepted by the Special Fund, the Special Fund will process the claim and pay benefits as provided by law. In FY23:

- 538 new no insurance claims were notified to the Special Fund.
- As of June 30, 2023, a total of 417 no insurance claims remained in an open status. The actuarial liability (lifetime reserves) for these claims was determined to be \$114.75 million as of June 30, 2022.

- Annual expenditures for no insurance claims totaled approximately \$7.2 million.¹²

All decisions made by the Special Fund, including a decision to accept or deny a claim or a determination of benefits may be protested by the injured worker or uninsured employer. If a protest is received, the case is referred to the ALJ Division for hearing. The Legal Division represents the interests of the Special Fund in these proceedings. In FY23:

- 119 no insurance cases were referred to the ALJ Division.

Processing of Insolvent/Bankrupt Self-insured Claims Under A.R.S. § 23-966: The Special Fund is responsible for continuing workers' compensation benefits for claimants insured by bankrupt self-insured employers. The Special Fund remains liable for the administration and payment of the bankrupt self-insured employer claims. In FY23:

- As of June 30, 2023, 17 claims remained in an open status. The actuarial liability associated with these claims was determined to be \$3.7 million as of June 30, 2022.
- Annual expenditures for these claims totaled approximately \$143,398.

Payment of Second Injury (“Apportionment”) Claims: When certain statutory criteria are met, the Special Fund is required under A.R.S. §§ 23-1065(B) and (C) to reimburse an insurance carrier or self-insured employer for fifty percent of permanent disability benefits paid to an injured worker. The Special Fund is represented by the Legal Division in cases where liability for apportionment is disputed. In FY23:

- 570 requests for apportionment reimbursement were processed. The actuarial liability associated with apportionment claims as of June 30, 2022 was determined to be \$86.8 million.¹³
- Annual expenditures totaled approximately \$2.86 million.
- 57 requests for apportionment reimbursement were referred to a hearing.

Payment of Vocational Rehabilitation Benefits: The Special Fund provides vocational rehabilitation¹⁴ assistance to qualified injured workers if requested by an insurance carrier, self-insured employer or the injured worker. The Special Fund promotes and assists in vocational rehabilitation, both for scheduled and unscheduled injuries, when the injured worker has suffered a

¹² The Special Fund seeks reimbursement from uninsured employers for benefits paid on “no insurance” claims. This collection effort is described later in this document.

¹³ An injured worker is entitled to receive lifetime permanent disability benefits. This actuarial liability reflects the Special Fund’s projected estimated liability on accepted apportionment claims for the lifetime of the injured worker.

¹⁴ Vocational rehabilitation is a process that enables persons with functional, psychological, developmental, cognitive and emotional impairments or health conditions to overcome barriers to accessing, maintaining or returning to employment or other useful occupation. One common component of vocational rehabilitation is job retraining.

permanent impairment and the worker is unable to return to their date of injury employment. While there are three distinct programs,¹⁵ the Special Fund's participation in each includes review and approval of the vocational rehabilitation plan and payment of program costs including tuition, books, and supplies.

This rehabilitation program is focused on providing vocational training that will result in meaningful employment. This training may include a variety of college courses to supplement prior education and on the job training where the Special Fund will pay 50% of the salary during training (as long as there is a commitment to hire the trainee). Examples of past vocational programs provided include bilingual tractor-trailer operator, equine instructor, forensics, mortuary science, computer-aided drafting, and pharmacy technician. For those that are eligible for vocational rehabilitation, but are lacking skills to enter a program, the Special Fund offers foundational training in math, reading, and English (ESL). In FY23:

- 222 new vocational rehabilitation referrals were received.
- As of June 30, 2023, 139 vocational rehabilitation claims remained in an open status. The actuarial liability associated with these benefits was determined to be \$4.6 million as of June 30, 2022.
- Annual expenditures for these benefits totaled approximately \$229,237.

Continuing medical benefits for pre-1973 workers' compensation claims ("old supportive care claims"): The Special Fund remains responsible to pay medical benefits in excess of original policy limits on claims occurring prior to the August 1973 law change requiring unlimited statutory medical benefits. Referred to as the "old supportive care claims," the Special Fund processes and pays medical benefits in these older workers' compensation claims. The responsible insurance carrier or self-insured employer remains responsible for the payment of indemnity benefits. In FY23:

- As of June 30, 2023, 81 old supportive care claims remained in an open status. The actuarial liability associated with these claims was determined to be \$4.6 million as of June 30, 2022.
- Annual expenditures totaled approximately \$263,710.

C. Administration of Safety and Health Programs

ADOSH's strategic vision is to be a leader in occupational safety and health by helping to make Arizona's workplaces as safe and healthy as possible. ADOSH works for the elimination of

¹⁵ (1) Vocational rehabilitation requested by the insurance carrier for an injured worker who has an unscheduled disability claim; (2) Vocational rehabilitation requested by an injured worker with an unscheduled disability claim without insurance carrier involvement; and (3) Vocational rehabilitation requested by either an insurance carrier or injured worker for the scheduled disability claim.

workplace injuries, illnesses and, most importantly, fatalities, so that all employees can return home safely when their work is done. The fulfillment of this vision is accomplished through the administration of the Arizona occupational safety and health program (“state plan”) which includes developing and enforcing safety and health standards and laws, providing free consultation services, along with education and training programs for both employers and employees, and collecting and reporting occupational safety and health statistics. A.R.S. § 23-407. This program is partially funded through three federal grants and retains its federal approval only as long as it remains “at least as effective as” the federal program. The requirement to establish and maintain an occupational safety and health program that is as effective as the federal occupational safety and health program is also statutorily mandated. A.R.S. § 23-405. The exclusive jurisdiction of ADOSH encompasses approximately 3.1 million employees working in over 181,000 public and private establishments. ADOSH’s administration of the program is accomplished through the work of its Compliance, Consultation, and Bureau of Labor Statistics Sections.

Compliance Section: Under the authority found in A.R.S. § 23-401 et seq. ADOSH conducts unannounced inspections of workplaces throughout Arizona to determine whether employers are complying with the Occupational Safety and Health Act and standards. Inspections may be the result of imminent danger, a workplace fatality, a referral, a complaint, a planned inspection, or a follow-up to verify previously cited violations have been corrected.

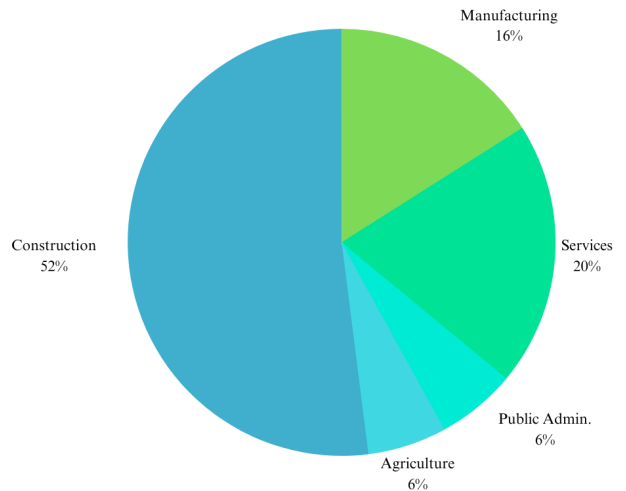
An inspection involving a work-related accident is generally serious in nature, potentially involving an injury or a fatality. A complaint inspection is generally the result of a serious safety/health allegation or an employer’s failure to respond to a written inquiry from ADOSH. A referral generally comes from another government source (e.g. police and fire departments). A planned or targeted inspection is one that is directed at employers in designated high-hazard industries, or employers with large numbers of workers’ compensation claims or higher than average injury and illness rates. During the course of these types of inspections, compliance officers determine whether there are violations of occupational safety and health statutes, standards, rules or regulations. Citations and penalties may be proposed for violations found during an inspection.

ADOSH is the only state or federal OSHA program in the country that has an independent body (the Commissioners) that reviews the appropriateness of proposed citations and penalties. At a public meeting before the Commissioners, a representative from ADOSH presents a *prima facie case* regarding the issuance of a proposed citation and penalty. Under A.R.S. § 23-418, the Commissioners may approve, modify, or remand the proposal based upon the information presented. Current Commission policy is to review all cases involving fatalities or where citations are proposed with penalties totaling more than \$2,500.00. Penalties totaling \$2,500.00 or less may be approved by the ADOSH Director without going before the Commissioners. All penalties assessed and collected go directly to the State General Fund. In FFY22, ADOSH:

- Conducted 763 compliance inspections.
- Issued 595 citations that were classified as serious, repeat or willful.

- Issued 927 citations that were classified as non-serious.
- Assessed approximately \$499,603 in penalties.

Employers have the right to request an informal conference to discuss any citation that is issued. Employers also have the right to formally contest a citation and have the matter heard before an administrative law judge (ALJ). A party dissatisfied with an ALJ’s decision may request review before the Arizona OSHA Review Board¹⁶ and if dissatisfied with the OSHA Review Board’s decision, may file an appeal with the Arizona Court of Appeals. In these contested cases, attorneys from the Commission’s Legal Division represent ADOSH. In FFY22:



- 23 ADOSH cases were referred to the Office of Administrative Hearings.
- No cases were appealed to the OSHA Review Board or the Arizona Court of Appeals.

The ADOSH Compliance Section is also responsible for investigating complaints of discrimination filed under A.R.S. § 23-425.¹⁷ At a public meeting before the Commission, a representative from ADOSH presents a report of its investigation, along with a recommendation to pursue or not to pursue the complaint. If the Commission determines that the provisions of A.R.S. § 23-425 have been violated, then the Commission files an action in the appropriate superior court to obtain relief for the employee, which may include rehiring or reinstatement of the employee to the employee’s former position with back pay. Throughout the process, ADOSH will work with the parties in an attempt to resolve these disputes. In FFY22:

- ADOSH received 405 discrimination complaints.
- 433 complaints were administratively closed (no jurisdiction, non-cooperation of complainant, etc.).
- 46 complaints were withdrawn.

¹⁶ The OSHA Review Board is described in Sunset Factor Analysis for that Board. See page 75.

¹⁷ This statute provides, in part, that “no person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this article or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this article.”

- 17 complaints were settled.

Compliance Assistance Unit: ADOSH’s Compliance Assistance is responsible for all Alliances, Partnerships, and the Voluntary Protection Program (VPP). This includes on-site audits and visits to both public and private employers in the three programs listed above.

When an Alliance or Partnership is signed and when a VPP application is accepted, ADOSH Compliance Assistance officers will visit a workplace and determine if they are meeting the OSHA standards and reward them with a designation. Compliance Assistance personnel also aid in outreach efforts such as at the annual OSHA Fall Stand-Down events. In FFY 22, Compliance Assistance:

- Conducted 413 on-site visits.

The Compliance Assistance Unit also oversees key outreach and partnership programs that help strengthen an employer’s understanding of OSHA requirements. The programs include the Voluntary Protection Program (“VPP”),¹⁸ the Safety and Health Achievement Recognition Program (“SHARP”),¹⁹ the Rate Reduction Awareness Program (RRAP),²⁰ the Public Entity Partnership Program (“PEPP”)²¹ and other Partnerships and Alliances. Employers who have chosen to partner with ADOSH have seen injury and illnesses reduced dramatically below their industry average. In FFY22, Compliance Assistance:

- Added 5 new VPP Star sites to the program.
- Added 8 new Partnerships Program participants.

¹⁸ The Voluntary Protection Program (VPP) recognizes general industry and public sector employers who implement effective safety and health management systems and maintain injury and illness rates below national Bureau of Labor Statistics (“BLS”) averages for their respective industry. In VPP, management, labor, and ADOSH work cooperatively and proactively to prevent fatalities, injuries, and illnesses through a system focused on hazard prevention and control, worksite analysis, training, and management commitment and worker involvement. To participate, employers must submit an application to ADOSH and undergo a rigorous onsite evaluation by a team of safety and health professionals. VPP participants are exempt from ADOSH programmed inspections while they maintain their VPP status. Approval into VPP is ADOSH’s official recognition of the outstanding efforts of employers and employees

¹⁹ The Safety and Health Achievement Recognition Program (SHARP) is a recognition program available to small business employers (with 250 employees or less). It is designed to honor small businesses that operate effective safety and health management programs. Acceptance into SHARP is an achievement that recognizes the business as a model for other small businesses to follow. SHARP employers can receive a one to two-year exemption from ADOSH programmed planned inspections. However, if ADOSH receives notice of an imminent danger, fatality, or a formal complaint, ADOSH will inspect the facility regardless of the exemption.

²⁰ The Rate Reduction Awareness Program (RRAP) was developed for small employers who have a total recordable case rate that is above the current BLS posting. A combination of visits and training that includes milestones are developed and strategized between a willing employer and the ADOSH consultation management team. All consultants have been instructed to actively assess employers they visit through a scheduled visit for RRAP participation. The management team holds a meeting quarterly where consultants are solicited for good candidates for the RRAP program.

²¹ The PEPP is a program that is unique to Arizona and was developed for public entity employers that have injury and illnesses within high hazard areas. Participation in this three year program is voluntary and includes onsite visits, training and assistance from the Consultation Section to develop strategies to provide a safer workplace.

Consultation Section: ADOSH’s Consultation program is responsible for all safety and health education and training services, including onsite consultation visits, seminars, and the preparation and distribution of video and written materials, and newsletters.

Onsite consultation visits. At the request of an employer, ADOSH consultants will perform an evaluation of an individual operation or an entire workplace. No citations or penalties are issued to employers utilizing consultation services as long as the employer corrects the apparent hazards which are noted as written recommendations in a letter to the employer. In FFY22, the Consultation Section:

- Conducted 505 safety visits
- Identified 1,233 serious and non-serious hazards.
- Removed 47,631 employees from a serious hazard.
- Helped employers save more than \$3.2 million in potential citations and fines.

Free Education and Training. Free education and training programs are provided to business organizations, labor organizations and individual employers upon request. In FFY22, this outreach included:

- 571 Training sessions and presentations
- 59 Webinars. With an average class size of 30 online attendees, webinars were conducted which addressed COVID-19, Fall Protection, Silica in Construction, Confined Space in Construction, Hazard Communication, Training requirements per the OSHA Standards, ADOSH Updates, and Exemplary Program help.
- 1 Safety Summit. This program takes training “on the road” to employers across the state and includes keynote speakers and opportunities to meet with safety professionals and vendors who exhibit safety products and services. Attendance for each safety summit is approximately 125 attendees.
- Partnership Programs. The Consultation Section also oversees, in partnership with the Compliance Assistance Unit, key outreach and partnership programs that help strengthen an employer’s understanding of OSHA requirements. The programs include the Voluntary Protection Program (“VPP”), the Safety and Health Achievement Recognition Program (“SHARP”), the Rate Reduction Awareness Program (RRAP), the Public Entity Partnership Program (“PEPP”) and other Partnerships and Alliances as mentioned above.

- Providing extensive information online and through outreach. This includes newsletters, Arizona Occupational Safety and Health Act posters, OSHA small business publications, Quick cards, sample safety and health programs, pamphlets, and online resources used to educate employers on compliance inspections as well as consultation services aimed at reducing injuries and illnesses.

Research and Statistics Division: This Division, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”), conducts the annual Census of Fatal Occupational Injuries (“CFOI”) and Survey of Occupational Injuries and Illnesses (“SOII”). This Division also collects data from the Commission’s database of Arizona workers’ compensation claims to prepare reports that identify lost workday claims by major industry, nature of injury, body part injured, event or exposure, source of injury, and occupation. The information collected is posted on the Commission’s website and provides important information about injury and illness trends or issues.

Administration of Elevator and Boiler Programs: ADOSH is also responsible for the administration of the elevator and boiler programs. While within the jurisdiction of ADOSH, these programs are not a part of the state OSHA plan and do not receive federal grant funding. Additionally, these programs are equipment oriented, and not based upon employee exposure. They are designed to protect the general public from injury or death resulting from unsafe elevators and boilers. As a result, cease and desist orders are utilized without monetary penalties. Once violations are corrected, certificates of operation are issued allowing an employer to utilize the elevator, escalator, or boiler. Additionally, political subdivisions are allowed to retain jurisdiction if they provide a comparable program. The City of Phoenix has retained jurisdiction over non-state owned elevators, escalators, and moving sidewalks within its boundaries. No other political subdivision has retained jurisdiction for elevators or boilers.

State	Injury Rate per 100,000 CY2021
Louisiana	1.9
Texas	2.1
Virginia	2.1
Delaware	2.2
New York	2.2
North Carolina	2.2
Ohio	2.2
South Carolina	2.2
Alabama	2.4
Arkansas	2.4
Massachusetts	2.4
Tennessee	2.5
Illinois	2.6
Missouri	2.6
New Jersey	2.6
Utah	2.6
Kansas	2.7
Maryland	2.7
Arizona	2.8
New Mexico	2.8
Oklahoma	2.8
Pennsylvania	2.9
West Virginia	2.9
Wyoming	2.9
Connecticut	3
Michigan	3
Nebraska	3
Indiana	3.1
Kentucky	3.1
Puerto Rico	3.1
California	3.2
Wisconsin	3.2
Alaska	3.3
Hawaii	3.3
Iowa	3.3
Minnesota	3.3
Nevada	3.3
Montana	3.4
Washington	3.5
Oregon	3.8
Vermont	3.8
Maine	4.7

Boiler Program. Under this program authorized under A.R.S. § 23-471 et seq., an owner or user of a boiler or lined hot water heater (“boiler”) is required to ensure the boiler is inspected at the time of installation and thereafter when repairs or alterations are made to the boiler or as otherwise required by law.²² The program is designed to protect the general public from injury or death resulting from unsafe boilers. Inspections are conducted by authorized “special inspectors,” which are private individuals usually in the employ of mines, utility companies and insurance companies who qualify as special inspectors under A.R.S. § 23-485. Special inspectors provide their inspection reports to the Boiler Section, and based upon those reports, certificates of operation are issued by ADOSH. There are approximately 10,609 units under the jurisdiction of this program requiring inspections by either insurance or private boiler inspectors. In FY23, Special Inspectors:

- Inspected 2,292 boilers.
- Identified 578 boiler deficiencies.

Elevator Program. The elevator inspection program is also intended to protect the general public from unsafe elevators. To this end, A.R.S. § 23-491.07 prohibits the operation of an elevator or conveyance (“elevator”) without a certificate of inspection issued by ADOSH. It is the elevator owner/operator’s duty to ensure that the necessary inspections are performed. A.R.S. § 23-491.02. The law permits annual inspections to be conducted by a private elevator inspector under A.R.S. § 23-491.16. There are currently 14 private elevator inspectors registered with the Commission although the private inspectors’ current inspection volume is very low. The vast majority of the required annual inspections have been, and will likely continue to be performed, by ADOSH elevator inspectors. Overseen by a Bureau Chief, there are twelve state elevator inspectors conducting inspections in Arizona.

During FY23, ADOSH:

- Completed 5,161 elevator inspections, which included annual inspections and other inspections required to be performed.²³
- Identified 6,631 elevator deficiencies.
- Third party inspectors conducted 329 inspections with 183 deficiencies identified.

With its existing capacity (staff of twelve elevator inspectors and an administrative assistant), ADOSH continues to face challenges in timely performing annual inspections and meeting the

²² Depending on the boiler type, operating pressure, code of construction and boiler use, an owner or user of a boiler may be required to have inspections at 12 to 36 month intervals, or once upon installation. A.A.C. R20-5-408.

²³ Other required inspections include new acceptance inspections, consultation inspections, out-of-service inspections, and removal inspections.

growing demands of the elevator industry. While ADOSH has seen improvement in this area through internal process improvements such as improved geographic routing, annual inspections are, on average, approximately eight months behind. In addition to the increasing numbers of elevators that require an annual inspection, high volumes of construction and growth in multi-rise buildings has also increased the demands placed on ADOSH to provide consultation and new construction acceptance inspections as required under the applicable statutes. Additionally, a majority of new elevators coming online are of a newer “traction-type” design, the inspection of which significantly increases the complexity and time of the required inspections. Instead of a mechanical room that is easily accessed with conventional hydraulic elevators, each traction elevator carries its own mechanicals and requires an individual inspection. As an example, the acceptance inspection of a traditional hydraulic elevator takes 6 to 12 hours to complete in contrast to a traction elevator that requires 18 hours on average.

To address these challenges, an additional elevator inspector was hired in FY22, and the Commission plans to hire two additional inspectors in FY24. Additionally, three individuals are in the process of receiving full QEI (Qualified Elevator Inspector) certifications which will add capacity to the team and increase the rate of inspections.

Enhancement of ADOSH Operations: ADOSH implemented a new Salesforce based data entry system to manage work production. Previously, ADOSH used a Federal OSHA Information System (OIS) to cover all federal and state plan states that was not customizable or had reports that were not generated solely for Arizona. The deployment of the system occurred over a period of approximately 10 months after discovery and testing were accomplished. The result of the project is a fully functional system that is cloud based and portable devices can be used from the field to populate inspection data.

All paper files were digitally copied and stored in a cloud based system. The copies can be searched and duplicated for Public Records Requests and research with ease. The removal of hard copies helped to reduce our physical file cabinets, thus increasing our office space for future growth as needed.

ADOSH State Plan Status with Federal OSHA: On February 15, 2023, Federal OSHA officially withdrew their “Reconsideration of final approval of State Plan” status in response to administrative and legislative actions Arizona enacted to address previous concerns raised. See Appendix G for details.

D. Adjudication of Disputes

The Administrative Law Judge (ALJ) Division is the administrative tribunal of the Commission. Its mission is to resolve all disputes coming before it efficiently and equitably. It has jurisdiction over disputes that arise under the Arizona Workers' Compensation Act, including matters involving civil penalties for uninsured employers; the Arizona Minimum Wage Act; and matters referred from the Labor Department regarding youth employment, wage claims pursuant to A.R.S. § 23-356, and

earned paid sick time. As part of its duties the ALJ Division must review and approve settlement agreements by interested parties to industrial injury claims; including, but not limited to agreements for full and final settlements pursuant to A.R.S. § 23-941.01.

Pursuant to statutory changes in 2016, the ALJ Division provides administrative support and serves as legal counsel to the Occupational Safety & Health (“OSHA”) Review Board pursuant to A.R.S. § 23-422. The ALJ Division does not act in the capacity of an adjudicator in its statutory service to the OSHA Review Board.

Most cases referred to the ALJ Division are workers' compensation matters. Cases are referred to the ALJ Division by the Claims Division, by direct filings to the ALJ Division, by the Legal Division, and by the Labor Division.

Workers' compensation matters involving an industrial injury claim are referred by the Claims Division, or by direct filing to the ALJ Division. The Claims Division refers matters when an interested party (injured worker, employer, insurance carrier or Special Fund) requests a hearing on a disputed issue. Cases are referred to the ALJ Division by direct filing when an injured worker files a request for investigation pursuant to A.R.S. § 23-1061(J); when interested parties file motions in matters not previously assigned to the ALJ Division; or when an interested party files a motion for protective order, motion for suspension of benefits, or certain types of settlement agreements.

Referrals by the Legal Division are made in cases where an employer in a civil penalty matter requests a hearing protesting an Order of Civil Penalty issued pursuant to A.R.S. § 23-907(I).

Referrals by the Labor Division are made when a request for hearing is filed after a Labor Division Award in matters involving youth employment, minimum wage, or earned paid sick time.

In workers' compensation matters, disputes can arise at all stages of a claim including the compensability of the claim, the injured worker's entitlement to active medical care and temporary wage loss benefits, and the injured worker's entitlement to supportive medical care and permanent disability benefits. In addition, disputes arise when an injured worker believes there is a benefit to which the worker is entitled that is not being provided, resulting in an injured worker filing a request for investigation. Since a workers' compensation claim exists for the life of the injured worker, it can be referred to the ALJ Division multiple times.

Referrals to the ALJ Division

In FY23, the ALJ Division received:

- 5,894 referrals in workers' compensation matters. The referrals included:
- 3,855 request for hearing referrals from the claims division,
- 1,196 request for investigations (“1061 J”), and
- 843 matters filed directly to the Chief ALJ queue.

The 5,894 referrals in workers' compensation matters represents a slight increase from the 5,728

referrals in FY22. The ALJ Division averaged approximately 5,676 referrals annually from FY17-FY21.

In addition, the ALJ Division received 2 referrals in civil penalty cases and 23 referrals from the Labor Division, including 2 child labor, 3 minimum wage, and 18 earned paid sick time matters.

A.R.S. § 23-1061(J): In June 2022, the ALJ Division assumed responsibility for the direct filing of a request for investigation pursuant to A.R.S. § 23-1061(J) (hereinafter a “J”). By statute, the Commission is charged with investigating and reviewing any claim in which it appears that the injured worker has not been granted benefits to which the worker is entitled.²⁴

Injured workers, or their representatives, are the only parties allowed to file “J”s. An injured worker may file a "J" when it appears the injured worker is entitled to benefits that have not been provided. Issues subject to investigation vary greatly and include authorization for medical treatment (including medications, medical equipment and diagnostic testing), payment of indemnity benefits, payment of medical benefits, and reimbursement of travel expenses.

If the parties are unable to informally resolve the matter, themselves or through the alternative dispute resolution, it is assigned to a presiding ALJ for hearing. If assigned for hearing, a hearing is required to be scheduled within 60 days of assignment. A.R.S. § 23-1061(J).

The injured worker initiates the investigation by filing a "J" request which automatically creates an ALJ matter. The duty judge reviews the request, ensures accurate information is entered regarding the interested parties to the claim, and issues the “J” investigation letter, soliciting a response within ten (10) business days. The duty judge will issue awards in cases where the matter is resolved between the parties, or where no action is appropriate.

The duty judge determines if the case is appropriate for referral to the “J” settlement program (discussed in the Alternative Dispute Resolution section below). The duty judge refers appropriate cases for a settlement conference, or refers the matter for a hearing.

If the matter is referred for a hearing the hearing is scheduled to be held within 60 days of assignment to the hearing judge. Once referred to a hearing judge, the case is handled like any other litigated matter involving workers’ compensation issues before the ALJ Division. The hearing process is discussed in the next section below.

In FY23, the average time for disposition of the 1,196 “J”s filed with the ALJ Division was 42 days. As discussed above, the investigation process begins with the issuance of the “J” investigation letter. The ALJ Division endeavors where possible to issue the “J” investigation letter within two business days. In FY23, the ALJ Division issued approximately 98% of its “J” investigation letters on the same, or the following business day.

The 1,196 “J” requests filed in FY23 is the largest number on record and it represents an increase of approximately 4% when compared to FY22. From FY17-FY21, an average of 918 “J”s were filed annually.

²⁴ Prior to June 1, 2022, “J”s were filed in the Claims Division, the Claims Division issued the “J” investigation letter, and the matter was referred by Claims to the ALJ Division.

The Hearing Process

Workers' Compensation Matters

In FY23, the ALJ Division:

- Held 5,759 workers' compensation hearings;
- Issued 4,902 written decisions (awards).

In FY23, the Arizona Court of Appeals issued 23 memorandum decisions, and 1 opinion in special actions, or appeals from the ALJ Division. Of those, 21 were affirmed.

The ALJ in a workers' compensation matter sits as the trier of fact and ruler on the law, including decisions regarding evidentiary submissions and objections. The role is similar to a superior court judge in a non-jury trial in a civil case. Once the hearings have been completed and any post-hearing memoranda filed, the presiding ALJ issues a written decision that contains findings of fact, conclusions of law, and an award.

Under A.R.S. § 23-942, an ALJ is directed to issue a workers' compensation decision within 30 days of the case being deemed submitted. A party disagreeing with the ALJ's decision may file a request for review that is considered by the ALJ who issued the decision. On review, the parties may file legal memoranda and the ALJ issues a written decision upon review affirming, reversing, supplementing, or modifying the decision upon hearing. If a party disagrees with the decision upon review, the party may file a petition for special action with the Arizona Court of Appeals within thirty days. *See* A.R.S. § 23-942; A.R.S. § 23-943; A.R.S. § 23-951; A.A.C. R20-5-158; A.A.C. R20-5-159.

When a request for hearing is received, or when a "J" request is referred to a hearing judge, The Chief ALJ (or designee) will randomly assign the matter to a presiding ALJ who will conduct the hearings. Currently, matters are randomly assigned automatically based on the location where the hearing was requested. Workers' compensation cases usually require more than one hearing to obtain all necessary evidence. The injured worker and non-expert witnesses, if any, testify at the first or "initial" hearing. Subsequent hearings, known as "further" hearings, are scheduled for expert witnesses such as medical doctors and vocational rehabilitation specialists. Except for "J" requests, the presiding ALJ will schedule an initial hearing within 90 days of assignment.

Prior to the COVID-19 global pandemic workers' compensation initial hearings were held in the county in which the worker resided at the time of the injury, or in another place selected by the Chief ALJ. Most initial hearings were held in Phoenix and Tucson. ALJs held initial hearings in Flagstaff, Yuma, and Lake Havasu City in alternating months. Hearings were held in additional locations as the need arose.

The pandemic necessitated changes in the regular hearing process, which were implemented by the ALJ Division, with support and guidance from agency leadership. The ALJ Division believes that the changes, although necessitated by a global pandemic, have increased injured workers' access to the system and improved participation of injured workers. Effective March 19, 2020, the ALJ Division instituted remote hearing procedures utilizing Google Meet. The use of video conference hearings, with parties able to access the Google Meet video conference remotely,

allowed the ALJ Division to continue holding hearings throughout the pandemic, largely in an uninterrupted manner. The division has continued to conduct hearings remotely. The Commission provides in person and remote in person access as necessary to meet the needs of the workers' compensation community and injured workers that may not have access to technology required to appear remotely.

To increase the availability of access, the ALJ Division set up and maintains a remote hearing room at the ICA for use of injured workers without access to technology. The ALJ Division scheduled and held in person hearings at the ICA, in hearing rooms set up with physical distancing and physical barriers between the judge and all participants, when necessary and consistent with health and safety directives required by law. The Commission continues to provide and maintain a remote hearing room at the ICA and holds hearings in person at the ICA upon request of a party to the matter.

Initial hearings and further hearings where witness credibility is at issue are conducted remotely via videoconference, or in person. Conversely, most further hearings for medical experts are held remotely utilizing Google Meet, with the medical expert appearing either by videoconference or by telephone. It is rare for the parties to dispute the credibility of a testifying doctor, rather the dispute involves the doctor's opinions and the basis for the same. It is much more convenient for the doctor to testify remotely.

Since out of town participants to the hearing process are frequently located in Phoenix or Tucson, the ALJ Division continues to offer point-to-point video conference capability for Phoenix to Tucson hearings to improve accessibility and reduce the parties' travel expenses.

The Division currently conducts over 97% of its hearings remotely, either by videoconference, or telephonically, as described above.

Hearing delays present a significant challenge for the ALJ Division because most workers' compensation disputes hinge on the medical relationship between the injury and the need for medical treatment or disability benefits which requires medical evidence. In Arizona, parties may submit medical reports into evidence to support their case, but opposing parties have the fundamental right to cross-examine the author of these reports.²⁵ Most parties are reluctant to waive their right to cross-examine a medical witness, so the ability to accept medical reports into evidence does not appreciably decrease the number of hearings which must be scheduled. Additionally, as medical treatment has become increasingly specialized, the ALJ Division has seen a corresponding increase in the parties' request for medical witnesses.

On average, the Phoenix ALJ Division office schedules 290 further hearings for medical witnesses each month. To ensure all parties have equal access to the hearing process, the Commission pays the medical witness testimony fees for doctors testifying on behalf of the injured worker and the ALJ Division schedules all further hearings.²⁶ These further hearings for medical testimony are difficult to coordinate because the doctors' schedules are usually booked far in advance. Depending on the number of witnesses requested, a case can take months before it is submitted for decision.

²⁵ A.R.S. § 23-941; A.A.C. R20-5-155; *Lopez v. Indus. Comm'n*, 162 Ariz. 578, 785 P.2d 98 (Ct.App. 1989).

²⁶ Prior to October 2022, the Commission paid medical witness testimony fees for all interested parties to the dispute. Effective October 1, 2022, the Commission increased the medical fees payable to testifying witnesses, and began paying the fees for medical testimony only for witnesses requested by injured workers.

The ALJ Division has instituted procedures to maintain movement of cases on the docket by creating internal processes requiring first contact and follow-up contact with medical witnesses and hearing participants within specified time frames. Over the past four fiscal years, the process has resulted in the ALJ Division decreasing the average time from assignment of a further hearing until scheduling of the further hearing by approximately 50%, to an average of less than 10 days in FY23. The ALJ Division has instituted procedures for early intervention and identification of issues to reduce delays in scheduling.

The ALJ Division launched a fast track hearing process to address the further hearing scheduling concerns. The fast track process screened cases to identify disputes involving limited medical issues which may be appropriate for an expedited disposition; the parties were invited to voluntarily participate in a hearing process with one hearing and no live medical testimony. Hearings were held within 30 days of referral to the fast track program, and a short form decision was issued within five business days after the hearing. Interested parties to workers' compensation matters did not want to forego live medical testimony and therefore, the ALJ Division redoubled its efforts to effectively and efficiently streamline the further hearing scheduling process, as noted above.

Civil Penalty Matters

Hearings in matters involving civil penalties are governed by A.R.S. § 23-907. An employer aggrieved by the determination pursuant to A.R.S. § 23-907(I) may file a request for hearing. The Legal Division has the burden of proof at a hearing to establish the employer is required to have workers' compensation insurance coverage in place and did not have such coverage. An employer aggrieved by the decision of the presiding ALJ may seek judicial review pursuant to A.R.S. §§ 12-901 through 12-921.

Labor Department Matters

Hearings in matters referred from the Labor Department have their own distinct procedure rules and statutory requirements. The matter is referred to the ALJ Division by the Labor Department upon receipt of a request for hearing. Generally, one hearing is held.

Matters involving minimum wage and earned paid sick time are governed by A.R.S. §§23-362 through 365, and A.R.S. §§ 23-371 through 381. In addition, the rules of procedure set forth in A.A.C. R20-5-1201, et seq., and A.R.S. § 41-1061 et seq., are applicable.

Twenty days' notice of the hearing is required and the presiding ALJ shall issue a decision within thirty days after the hearing. A request for rehearing or review is authorized pursuant to A.A.C. R20-5-1215; alternatively, pursuant to A.A.C. R20-5-1214, an aggrieved party may file an action in the Superior Court, pursuant to A.A.C. R20-5-1216 and A.R.S. §§ 12-901, et seq.

Matters involving youth employment are governed by A.R.S. § 23-237 and A.R.S. § 41-1061 et seq. Upon filing of a timely request for hearing, the matter is referred to the ALJ division.

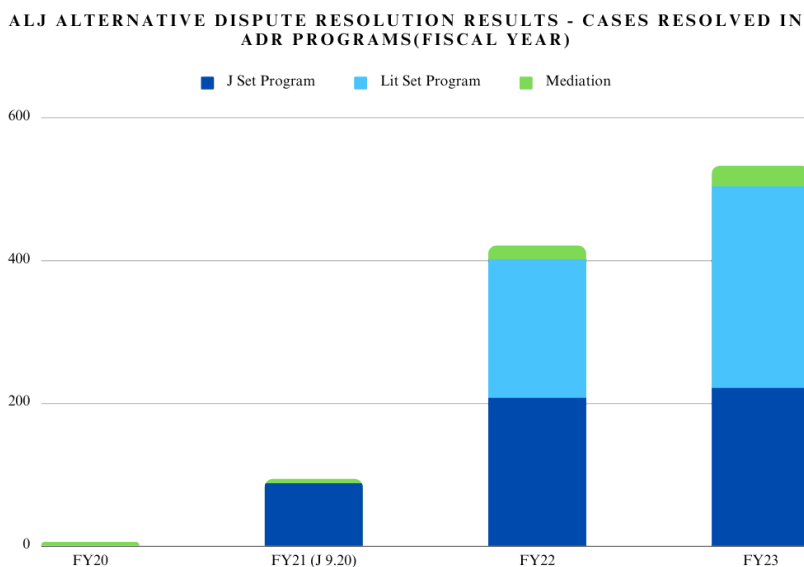
A hearing shall be held thirty days from receipt of the request for hearing, unless a continuance is granted, and notice of the hearing is sent fifteen days prior to the hearing. The hearing process is governed by A.R.S. § 41-1061 et seq. The ALJ shall issue a decision within 30 days after

submission, normally the date of the hearing. A party aggrieved by the hearing process may file a writ of certiorari to the Court of Appeals pursuant to A.R.S. § 23-951.

Alternative Dispute Resolution Process

The ALJ Division encourages the settlement of cases where appropriate and works with the interested parties to achieve this goal. The ALJ Division offers mediation, and settlement conferences in “J” and non-“J” workers’ compensation matters. All alternative dispute resolution (ADR) programs are confidential. ADR sessions are conducted by ALJs with ADR training and experience, and the assigned mediator or settlement conference judge does not communicate with the hearing judge regarding the ADR sessions, other than to report if a settlement is reached. The ALJ Division currently has ten ALJs who have received at least 40 hours of ADR training. If the dispute is resolved through an ADR program or session, the parties’ agreement is submitted to the presiding ALJ, or if no presiding judge is assigned, to the Chief ALJ for review and approval.

The three distinct ADR programs offered by the ALJ Division are Mediation, “J” settlement program; and Non-“J”, or litigation, settlement programs. Mediation is completely voluntary and initiated at the joint request of the parties; the “J” settlement conference program is initiated by the duty judge, and may include multiple sessions to address the issues raised; and the non-“J”, or litigation, settlement conference program, is initiated by the ALJ Division, in cases involving single issue disputes involving average monthly wage (AMW), bad faith, loss of earning capacity (LEC), and rearrangement. In addition, the parties may request a settlement conference, or referral to mediation, at any point during a litigated matter and the case is referred for a settlement conference.



Mediation

Mediation offered by the ALJ Division requires the voluntary agreement of all interested parties and can be requested at any time, with or without a pending hearing request. Mediation is designed to handle more complex, complicated, and involved issues; it requires mediation statements from the interested parties; and may be handled by one, or more, mediators, depending on the nature and extent of the dispute.

“J” Settlement Program

The “J” settlement program is part of the duty judge’s investigation phase and ADR sessions are completed prior to the matter being referred to a hearing judge. The duty judge identifies the cases

placed in the “J” settlement program, and the duty judge, or a designee ALJ, schedules and conducts the “J” ADR sessions with the interested parties. Interested parties may appear through counsel, or without counsel; which allows claims adjusters and injured workers to open a dialogue regarding disputed issues while developing a working relationship that can benefit both parties moving forward over the life of an industrial injury claim. In addition, the “J” ADR sessions provide the duty judge with greater flexibility in explaining the law, and the hearing process, while working with the parties toward a resolution of the issue. Further, it allows for the quick scheduling of conferences to address vital, time-sensitive issues, such as medication authorizations or denial of medical care. Multiple sessions may be held in the “J” program at the parties’ request if substantial progress is being made, and the “J” program allows for the addition and resolution of additional issues that arise during ADR sessions.

Non-“J”, Litigation Settlement Program

The litigation settlement program occurs during the active litigation case after a case has been assigned to a hearing judge. A settlement judge, not the hearing judge, is assigned and schedules a settlement conference prior to the initial hearing. The program is designed to address single issue disputes and most sessions take 15-30 minutes. The ALJ Division makes an initial referral to the litigation settlement program in cases involving dispute regarding AMW, bad faith, LEC, and rearrangement. The settlement conference is not intended to delay the initial hearing and completion of a settlement conference is not required before proceeding to a hearing. In addition, the ALJ Division will refer any matter pending hearing to a settlement conference judge for ADR upon joint request of the parties.

Since the previous audit, the ALJ Division has greatly increased its ADR offerings. The “J” settlement conference program was instituted in early 2020, with the non-“J” program launching in September 2020. Both programs have been in place throughout FY22-FY23. Since the beginning of FY21, the fiscal year during which both settlement conference programs were launched, the ALJ Division has seen significant engagement and participation from the workers’ compensation community.

In FY21-FY23 the ALJ Division, with the workers’ compensation community:

- Held 1,666 “J” settlement conferences and Non-“J” settlement conferences;
- Resolved 297 “J” cases as a direct result of a settlement conference and 177 Non-“J” cases as a direct result of a settlement conference; and
- Resolved 534 “J” cases in the settlement conference program before a hearing was held; and resolved 565 Non-“J” cases in the settlement conference program before a hearing was held.

In addition, from FY19-FY23, the number of mediations held by the ALJ Division has tripled from 19 in FY21 to 60 in FY23, with 29 cases resolved in mediation in FY23.

In FY23, the ALJ Division held the most ADR sessions in each program since its inception, resolved the most cases as a direct result of an ADR session, and resolved the most cases within the ADR program before a hearing was required. The division anticipates consistent participation in its ADR program moving forward and will continue to develop the program and increase

training of ALJs for more efficient and effective use of ADR moving forward. The engagement and participation of the workers' compensation community with the efforts of the ALJ Division have reduced the need for litigation and provided for more time, effort, and resources to be devoted by presiding ALJs to issuing determinations in disputed matters.

In FY23, the ALJ Division:

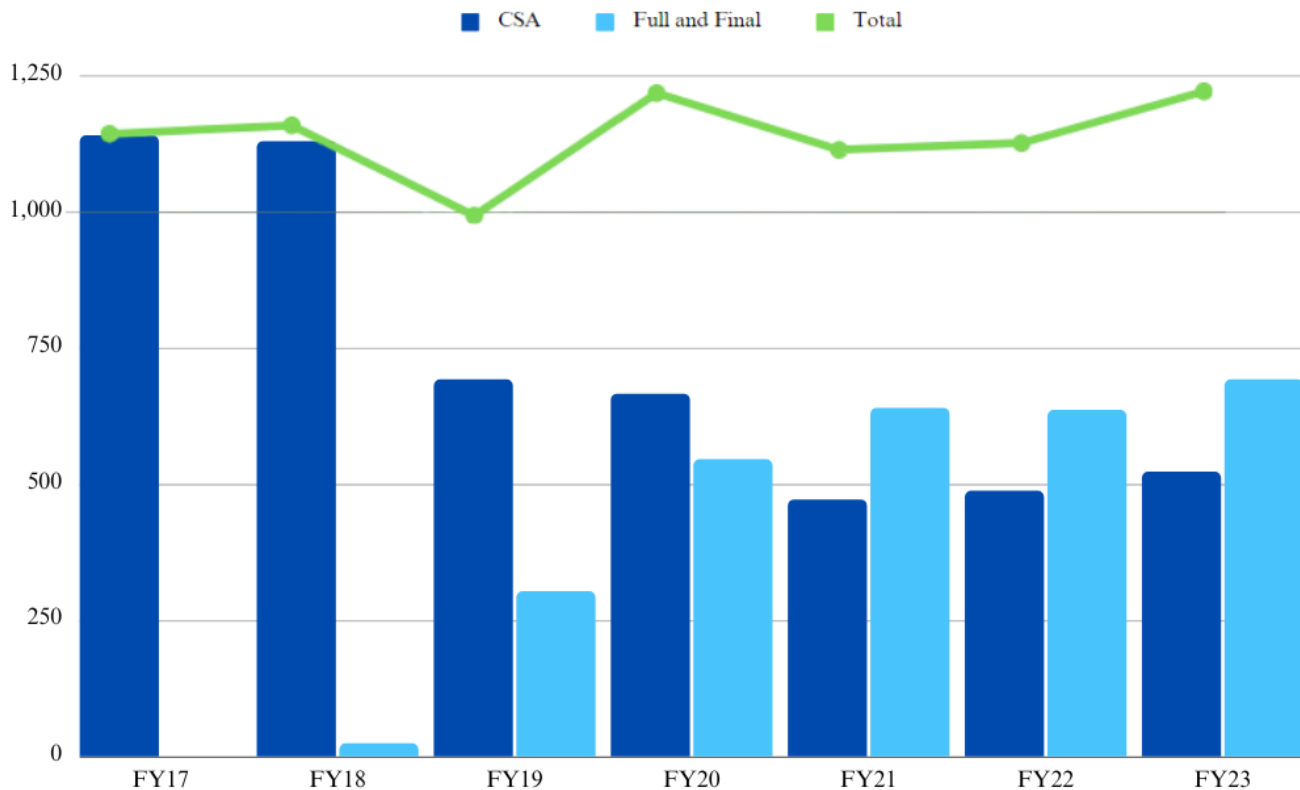
- Issued 1,813 awards regarding stipulations or settlement agreements, including Compromise and Settlement Agreements, Full and Final Settlements, and Final Settlement and Release of Undisputed Supportive Care

Full and Final Settlements

Arizona statutory updates beginning in 2017, and revised in 2018, provide for the Full and Final Settlement of workers' compensation claims. See A.R.S. § 23-941.01. These statutory changes have provided the interested parties in an industrial injury claim with greater flexibility in resolving an industrial injury claim and settling all aspects of the claim, with finality.

The ALJ Division reviews full and final settlements for compliance with the statutory requirements; holds a hearing as required by A.R.S. § 23-941.01(E), when an injured worker is representing their own interests; and if statutory compliance is found, and requisite factual findings can be made, enters an award approving the full and final settlement.

NUMBER OF AWARDS ISSUED INVOLVING COMPROMISE AND SETTLEMENT AGREEMENTS AND FULL AND FINAL SETTLEMENTS



Enhancement and Modernization

Enhancement and modernization of programs within the agency and the ALJ Division has continued. Agency efforts from 2012 through 2017, resulted in significant upgrades and enhancements resulting in increased stability, productivity, and efficiency of business processes.

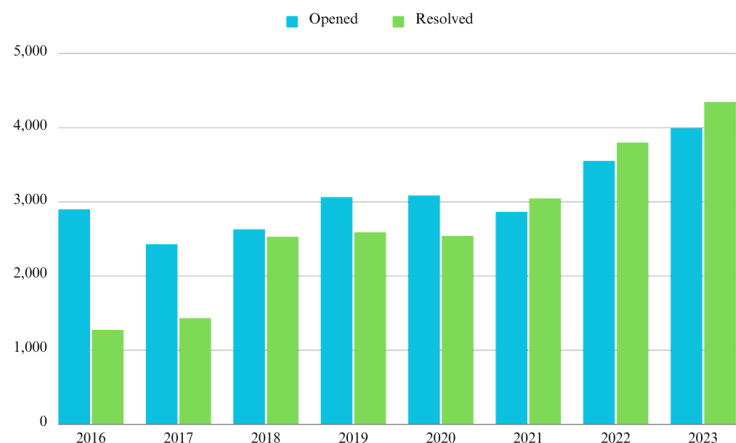
With continued attention to increasing efficiency and greater use of technological solutions, the ALJ Division participated in the agency’s implementation of a Salesforce based document and case management application. The application launched in May 2019. The ALJ application provides for complete electronic case access, remotely through secure connections, or onsite in Phoenix or Tucson. It further provides the interested parties with electronic filing and provides attorneys and claims adjusters with electronic notification of documents added to an existing claim and ALJ matter daily. The division continues to receive filings from interested parties in hard-copy physical form, and via facsimile. The transition to the ALJ application reduced support staff time and resource needs necessary for daily mailing of all documents created by the ALJ Division, allowing the division to allocate additional time and resources to the further hearing scheduling process, referenced above, and review and improvement of ALJ Division processes.

The modernization efforts were a vital component in allowing the ALJ Division to conduct remote hearings during the global pandemic, and have allowed continued optimization and efficiency in scheduling hearings to meet the growing needs of the workers’ compensation community in determining dispute issues. The ALJ Division and the agency continue to implement additional technological and process enhancements to continue fulfilling its mission.

E. Administration of Payment of Wages Law

The Industrial Commission of Arizona Labor Department (the “Department”) is responsible for the enforcement of Arizona’s payment of wage, minimum wage, earned paid sick time, and youth labor laws. See A.R.S. Title 23, Chapter 2, Article 3 (Youth Employment), Article 7 (Payment of Wages), Article 8 (Minimum Wage and Employee Benefits), and Article 8.1 (Earned Paid Sick Time).

WAGE CLAIMS OPEN AND RESOLVED (FISCAL YEAR)



Payment of Wages Enforcement:

In accordance with A.R.S. Title 23, Chapter 2, Article 7 and Title 20, Chapter 5, Article 10 of the Arizona Administrative Code, the Department is required to investigate employee complaints for wages due up to \$5,000.00, and to make an administrative determination without a hearing as to the

amount due, if any, up to \$5,000.00. An employee has the option of filing a wage claim with the Department or may sue directly in Superior Court for any amount due. Wage claim determinations are based on the information discovered during the investigation. At the conclusion of an investigation, the Department issues a written determination, which can be appealed to the Superior Court for de novo review. If the Department determines that wages are owed and the employer does not comply with the Department's order within ten days after the order becomes final, the employer is required to pay the employee treble the amount of the unpaid wages. In cases in which the Department is unable to render a determination, the employee is permitted to file a civil action.

In FY23, the Department:

- Received 3,989 wage claims.
- Closed 4,341 claims.
- Issued 705 determinations in favor of the employee (determinations in favor of the employee were made following a complete investigation of the wage claim. 252 determinations in favor of the employee were made because the employer failed to respond to the department.)
- Issued 731 determinations in favor of the employer (determinations in favor of the employer were made following a complete investigation of the wage claim.)
- All remaining claim closures were based on the employer paying the employee prior to determination, insufficient information to make determinations, lack of jurisdiction, etc.
- The average age of the oldest wage claim was 121 days.
- The average monthly pending wage claim age was 36 days.

Minimum Wage Law Enforcement:

On November 7, 2006, Arizona voters approved Proposition 202, referred to as the “Raise the Arizona Minimum Wage for Working Arizonans Act.” Under the Act, which became effective January 1, 2007, the Commission was given the authority to enforce and implement Arizona minimum wage laws. On November 8, 2016, Arizona voters passed Proposition 206, the “Fair Wages and Healthy Families Act,” which increased the minimum wage hourly rate through 2020, with annual raises thereafter based on changes in the cost of living. The Fair Wages and Healthy Families Act continues to grant the Commission authority to enforce Arizona minimum wage laws.

In accordance with A.R.S. Title 23, Chapter 2, Articles 8 & 8.1, and Title 20, Chapter 5, Article 12 of Arizona Administrative Code, any person, or organization alleging a minimum wage violation may file a complaint with the Department or may file a civil lawsuit. Complaints filed with the

Department must be filed within one year from the date of the violation. After receiving or initiating a complaint, the Department will review and investigate the complaint and issue a findings and order setting forth its determination based on the information and arguments received during the investigation. Except in cases where the Department finds that no violation has occurred, any party aggrieved by the Department's findings and order may file a request for hearing within 30 days after the findings and order is served upon the party. The ICA Administrative Law Judge Division will set the matter for hearing and, if the parties do not resolve the matter, hold a hearing, and issue a written decision. Any party may request review of the ALJ's decision after the decision is mailed or served on the parties. The decision or decision upon review is final 35 days after it is mailed or served upon the party affected unless the party appeals the ALJ's decision or decision upon review to the Superior Court. In cases where the Department finds that no violation of the Act has occurred, a complainant is permitted to file a civil action in Superior Court.

In FY23, the Department:

- Received 56 minimum wage claims.
- Closed 50 minimum wage claims (7 claims were resolved through mediation, 17 claims were closed with a finding of no violation, 15 claims were issued as violation determinations. The remaining closures were based on the claim being withdrawn, unable to locate the employer, duplicates, etc.)
- The average age of the oldest minimum wage claim was 47 days.
- The average monthly pending minimum wage claim age was 23 days.

Earned Paid Sick Time Enforcement:

The Fair Wages and Healthy Families Act established new state law regarding earned paid sick time. Earned paid sick time is leave time that is compensated at the same hourly rate (but not less than minimum wage) and with the same benefits, including health care benefits, that an employee would have received for the work hours during which earned paid sick time is used. Generally, employees may use earned paid sick time in the following circumstances: (1) medical care or mental or physical illness, injury, or health condition of the employee or any of the employee's family members; (2) a public health emergency affecting the employee or a family member of the employee; and (3) an absence due to domestic violence, sexual violence, abuse, or stalking involving the employee or any of the employee's family members. For employers with 15 or more employees, employees are entitled to accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but employees are not entitled to accrue or use more than 40 hours of earned paid sick time per year, unless the employer sets a higher limit. For employers with fewer than 15 employees, employees are entitled to accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but

they are not entitled to accrue or use more than 24 hours of earned paid sick time per year, unless the employer sets a higher limit.

In accordance with A.R.S. Title 23, Chapter 2, Articles 8 & 8.1, and Title 20, Chapter 5, Article 12 of Arizona Administrative Code, any person, or organization alleging an earned paid sick time violation may file a complaint with the Department or may file a civil lawsuit. Complaints filed with the Department must be filed within one year from the date of the violation. After receiving or initiating a complaint, the Department will review and investigate the complaint and issue a findings and order setting forth its determination based on the information received during the investigation. Except in cases where the Department finds that no violation has occurred, any party aggrieved by the Department's findings and order may file a request for hearing within 30 days after the findings and order is served upon the party. The ICA Administrative Law Judge Division will set the matter for hearing and, if the parties do not resolve the matter, hold a hearing, and issue a written decision. Any party may request review of the ALJ's decision after the decision is mailed or served on the parties. The decision or decision upon review is final 35 days after it is mailed or served upon the party affected unless the party appeals the ALJ's decision or decision upon review to the Superior Court. In cases where the Department finds that no violation of the Act has occurred, the complainant is permitted to file a civil action in Superior Court.

In FY23, the Department:

- Received 340 earned paid sick time claims
- Closed 358 earned paid sick time claims (33 claims were resolved through mediation, 197 claims were closed with a finding of no-violation, 56 claims were issued violation determinations. The remaining closures were based on the claim being withdrawn, unable to locate the employer, duplicates, etc.)
- The average age of the oldest earned paid sick time claim was 74 days.
- The average monthly pending earned paid sick time claim age was 29 days.

Minimum Wage and Earned Paid Sick Time Retaliation Enforcement:

The Fair Wages and Healthy Families Act also prohibits an employer from retaliating or discriminating against an employee or former employee for exercising earned paid sick time or minimum wage rights. Protected rights include, but are not limited to: (1) requesting or using earned paid sick time; (2) filing a complaint with the ICA or Arizona courts; (3) informing any person about an employer's alleged earned paid sick time or minimum wage violation; (4) participating in an investigation, hearing or proceeding, or cooperating with or assisting the Commission in an investigation of alleged violations; and (5) informing any person of earned paid sick time or minimum wage rights under Arizona law. Retaliation is defined broadly in the Act as a "denial of any right guaranteed under [Title 23, Chapter 2, Articles 8 and 8.1] and any threat, discharge,

suspension, demotion, reduction of hours, or any other adverse action against an employee for the exercise of any right guaranteed [in Articles 8 and 8.1] including any sanctions against an employee who is the recipient of public benefits for rights guaranteed [in Articles 8 and 8.1].” An adverse action taken within ninety days of a person’s engaging in a protected activity raises a presumption that the action was retaliatory, which may only be rebutted by clear and convincing evidence that the action was taken for other permissible reasons. Damages for retaliation must be “sufficient to compensate the employee and deter future violations, but [may] not be less than one hundred fifty dollars for each day that [a] violation continued or until legal judgment is final.”

In accordance with A.R.S. Title 23, Chapter 2, Articles 8 & 8.1, and Title 20, Chapter 5, Article 12 of Arizona Administrative Code, any person, or organization alleging a minimum wage or earned paid sick time retaliation violation may file a complaint with the Department or may file a civil lawsuit. Complaints filed with the Department must be filed within one year from “when the employee knew or should have known of the alleged violation.” After receiving or initiating a complaint, the Department will review and investigate the complaint and issue a findings and order setting forth its determination based on the information received during the investigation. Except in cases where the Department finds that no violation has occurred, any party aggrieved by the Department’s findings and order may file a request for hearing within 30 days after the findings and order is served upon the party. The ICA Administrative Law Judge Division will set the matter for hearing and, if the parties do not resolve the matter, hold a hearing, and issue a written decision. Any party may request review of the ALJ’s decision after the decision is mailed or served on the parties. The decision or decision upon review is final 35 days after it is mailed or served upon the party affected unless the party appeals the ALJ’s decision or decision upon review to the Superior Court. In cases where the Department finds that no violation of the Act has occurred, a complainant is permitted to file a civil action in Superior Court.

In FY23, the Department:

- Received 140 retaliation claims
- Closed 131 retaliation claims (23 claims were resolved through mediation, 56 claims were closed with a finding of no-violation, 15 claims were issued violation determinations. The remaining closures were based on the claim being withdrawn, unable to locate the employer, duplicates, etc.)
- The average age of the oldest retaliation claim was 78 days.
- The average monthly pending retaliation claim age was 27 days.

Enforcement of Youth Labor Laws

In accordance with A.R.S. Title 23, Chapter 2, Article 3, the Department enforces laws prohibiting youth under the ages of 16 or 18 from employment in specified industries or areas of employment. Permissible hours of work for youth are also set by statute. The Department is authorized to issue

administrative cease-and-desist orders to persons or entities reasonably believed to be violating applicable employment laws or regulations. The Department is authorized to seek injunctive relief in Superior Court in cases of a failure or refusal to comply with a final cease and desist order. A cease-and-desist order is final unless the party requests a hearing by an ALJ within 20 days of the issuance of the cease-and-desist order. After a hearing, an ALJ can affirm, modify, or vacate the cease-and-desist order. Judicial review of an ALJ cease-and-desist order is provided by statutory certiorari if the appeal is filed in the Court of Appeals within 30 days after mailing of the order. The scope of review in the Court of Appeals is whether the Department acted within its authority or whether the ALJ's decision is supported by the evidence or both.

In FY23, the Department:

- Received and reviewed 743 injury reports involving minors (675 were deemed to not need an investigation, 31 were opened and fully investigated, the remaining are pending review.)
- Received and investigated 43 public youth labor complaints.
- Closed 82 youth labor investigations (27 cases were issued violation determinations. 30 cases were closed with a finding of no-violation. The remaining closures were based on the youth being exempt, complaint was misfiled, variation obtained, etc.)
- The average age of the oldest youth labor case was 62 days.
- The average monthly pending youth labor case age was 30 days.

As part of an agencywide effort to improve operations and efficiency through enhancement of programs and modernization, in June 2020, the Labor Department replaced its outdated Voyager case management system with a new customized case management system, Salesforce, which allows for quick and efficient documentation and processing of information and claims. Electronically submitted claim forms from customers automatically integrate directly into the new system. This replacement allows for better tracking of individual cases and improved customer service supporting each of the Department's six programs. The system has also increased the Department's efficiency and productivity replacing paper processes with electronic processes to generate templates, scan and store documents, and track notes and due dates.

F. Collection of Civil Penalties, Special Fund Monies Owed, and the Administration of the Municipal Firefighter Cancer Reimbursement Fund

Collection of debts owed to the Commission include ADOSH penalties under A.R.S. § 23-418, civil penalties assessed against uninsured employers under A.R.S. § 23-907(I), penalties on no insurance claims under A.R.S. § 23-907(E), penalties assessed for bad faith/unfair claims processing practices under A.R.S. § 23-930(C), and penalties assessed for youth employment violations under A.R.S. § 23-236. Collection of debts owed to the Special Fund include reimbursement from uninsured employers for benefits paid on no insurance claims, recovery from third parties in circumstances where a third party caused an injury to an employee in a no insurance claim (referred to as

“subrogation”), and reimbursement from the estates of bankrupt self-insured employers for the processing and payment of claims under A.R.S. § 23-966.

Money owed to the Commission or Special Fund is recorded as an accounts receivable. With the exception of monies owed from an estate of a bankrupt insurance carrier or self-insured employer, if such account is not paid within the required time-frame (usually 30 days), then the account is subject to collections, which is overseen by the Accounting Division’s Collection Section. The collection efforts begin with written notification to the debtor, and in those cases where the debtor does not either pay the debt or enter into a payment plan, may proceed to the filing and recording of a judgment and enforcement actions through the court system. The Collection Section may perform “skip traces” to locate a debtor and will also attempt to ascertain whether there are collectible assets. In those cases where the debtor has filed bankruptcy, the Collection Section will file a notice of claim with the Bankruptcy Court. The Collections Section will also refer collection matters to the Office of the Arizona Attorney General, Bankruptcy Collection Enforcement, where appropriate.

If the money owed is a civil penalty payable to the Commission, then it is required to be deposited into the State General Fund when collected.²⁷ If the money owed is to reimburse the Special Fund, then it is required to be deposited into the Special Fund when collected.²⁸

In FY23, the following was deposited into the State General Fund for these penalties:

- Uninsured Employer civil penalties: \$49,568
- Safety and Health penalties: \$459,429
- Other Penalties and Interest:²⁹ \$32,484

In FY23, the following was deposited into the Special Fund as reimbursement from uninsured employers to the Special Fund:

- No insurance recoveries: \$1,449,274

The process to collect money owed to the Special Fund from bankrupt employers involves the filing of proofs of claims and taking other legal action to recover from the statutory deposits and other assets of the carrier or self-insured employer. From 1969 through 2004, SCF Arizona (now CopperPoint) was responsible for this collection activity. In 2005, this responsibility shifted to the Special Fund. As of June 30, 2023, the Special Fund had recovered the following:

- Estates of bankrupt self-insured employers:³⁰ Approximately \$3.7 million

²⁷ A.R.S. § 23-907(E).

²⁸ A.R.S. §§ 23-907(D) and 23-966.

²⁹ Penalties for violations of Child Labor, Civil Penalties, Bad Faith laws, and miscellaneous interest.

³⁰ Eleven self-insured employers have been declared bankrupt.

During FY2023, the Collections Section was moved from the Legal Division to the Accounting Division as part of the Commission's continuing efforts to align business processes so that they achieve the most efficient and effective results. The benefits of this transition was to eliminate redundant processes that were necessary due to the segregation of the Collections functions between two separate divisions.

The Commission also administers the Municipal Firefighter Cancer Reimbursement Fund (MFCRF) by assessing an annual fee of \$15 million, prorated on incorporated cities and towns and reimbursing the amounts paid by municipalities for firefighter and fire investigator cancer-related workers' compensation expenses, A.R.S. § 23-1702(A)

3. THE EXTENT TO WHICH THE AGENCY'S KEY STATUTORY OBJECTIVES AND PURPOSES DUPLICATE THE OBJECTIVES AND PURPOSES OF OTHER GOVERNMENTAL AGENCIES OR PRIVATE ENTERPRISES.

Except as noted below, we are unaware of any other agency with objectives that are similar, conflicting or duplicative to the Commission's objectives. In any case in which another entity is conducting a parallel investigation regarding a similar interest, the Commission will work collaboratively with that entity or when possible conduct a joint inspection.

- Enforcement of safety standards. While the Commission is the only agency that has jurisdiction to enforce occupational safety and health standards for the protection of employees, other agencies have regulatory authority over certain public life and safety conditions or practices. For example, the Corporation Commission is charged with ensuring that the citizens of Arizona have railroad and pipeline systems that are operated and maintained in as safe a manner as possible. The Arizona Department of Health Services Bureau of Radiation Control administers a safety program and enforces rules and regulations for the control of ionizing and non-ionizing radiation. The City of Phoenix oversees the safety and inspections of elevators, escalators, and moving sidewalks within their jurisdiction. In any area in which the Commission may find itself addressing issues of mutual concern, the Commission will work together with the other agency to ensure that inspections are performed without issues.
- The Commission recognizes federal jurisdiction in safety matters (e.g. matters covered by the Federal Railroad Administration or Federal Environmental Protection Administration). In such matters, the Commission will either defer to state contracted agencies such as the Corporation Commission and the Department of Environmental Quality or refer the matter to the appropriate federal authority. On those few occasions where a multi-agency inspection is required, the Commission will attempt to coordinate its inspection without unnecessarily burdening the entities involved.

- Enforcement of Child Labor Standards. The State Department of Labor is charged with the enforcement and administration of the Youth Employment Laws. The U.S. Department of Labor also enforces child labor standards under the Federal Fair Labor Standards Act. When there are different requirements between the laws, the stricter law takes precedence with enforcement by the applicable state or federal jurisdiction. Additionally, the Arizona Attorney General’s Office may investigate a child labor matter that is also being investigated by the State Department of Labor. In that instance, the Commission will work collaboratively with the Attorney General’s Office.
- Enforcement of State Minimum Wage. An employer will likely be subject to the federal, state, and local minimum wage laws. When there are different requirements between the laws, the Commission has jurisdiction to enforce the state minimum wage laws. For example, since Arizona’s minimum wage law requires a higher minimum wage rate than the federal law, an Arizona employer who is subject to both laws must pay the Arizona minimum wage rate, assuming that it is not also subject to local laws outside of the Commission’s jurisdiction.
- Adjudication of Administrative Disputes. The Office of Administrative Hearings adjudicates administrative disputes arising from ADOSH as well as general fund agencies, Commissions and boards. It does not adjudicate disputes arising from the Arizona Workers’ Compensation Act or the Arizona Labor Department since the Commission is a non-general fund agency with statutory authority to adjudicate disputes within its jurisdiction. Additionally, the Commission appoints its own administrative law judges who must be licensed to practice law in Arizona and be able to decide complex cases arising under the Arizona Workers’ Compensation Act, the Arizona Minimum Wage Act, the Fair Wages and Healthy Families Act, and Youth Labor laws.

4. THE EXTENT TO WHICH RULES ADOPTED BY THE AGENCY ARE CONSISTENT WITH THE LEGISLATIVE MANDATE.

The Commission has been given both general and specific rulemaking authority in Title 23.³¹ The following rules adopted by the Commission are found in Title 20, Chapter 5 of the Arizona Administrative Code and are fully consistent with the legislative mandate.

- Article 1, Workers' Compensation Practice and Procedure, R20-5-101 et seq., last amended effective October 1, 2018. These rules address practice and procedure requirements for both the processing of claims and the hearing process before an administrative law judge. The

³¹ See A.R.S. §§ 23-107(A)(1) (General); 23-240 (Youth Employment); 23-361 (Wage Claims); 23-364 (Minimum Wage); 23-376 (Earned Paid Sick Time); 23-405(4) (OSHA); 23-410 (OSHA Standards); 23-474(3) (Boilers); 23-491.04(3) (Elevators); 23-921(B) (Workers’ Compensation); 23-961(G) (Self-Insurance Taxes); 23-961.01(F) (Workers’ Compensation Self-Insurance Pools); 23-1044(G) (Workers’ Compensation Loss of Earning Capacity); 23-1066 (Workers’ Compensation Guardian Ad Litem); 23-1067(A) (Workers’ Compensation Lump Sum Commutation).

rules are consistent with the legislative mandate and the five year review by the Governor's Regulatory Rule Council addressing this issue was last approved on September 14, 2019.

- Article 2, Self-insurance Requirements for Individual Employers and Workers' Compensation Pools Organized under A.R.S. §§ 11-952.01(B) and 41-621.01, R20-5-201 et seq., was repealed effective October 5, 2022.
- Article 3 expired January 3, 2017.
- Article 4, Arizona Boilers and Lined Hot Water Heaters, R20-5-401 et seq., last amended effective December 7, 2022. These rules address the inspection, operation and standards of boilers under the jurisdiction of ADOSH. The rules are consistent with the legislative mandate and the five year review by the Governor's Regulatory Review Council addressing this issue was last approved on June 4, 2019.
- Article 5, Elevator Safety, R20-5-501 et seq., last amended effective January 9, 2023. These rules address the inspection, operation and standards of elevators under the jurisdiction of ADOSH. The rules are consistent with the legislative mandate and the five year review by the Governor's Regulatory Review Council addressing this issue was last approved on January 4, 2020.
- Article 6, Occupational Safety and Health Standards, R20-5-601 et seq., last amended effective July 8, 2022. The Arizona OSHA plan retains its federal approval as long as it remains "at least as effective as" the federal program. Being "at least as effective as" includes the adoption of federal occupational safety and health standards within six months of federal adoption. Adoption of these federal occupational safety and health standards is accomplished through the rulemaking process, with the exception that the rules are reviewed by the Attorney General's Office instead of the Governor's Regulatory Review Council. The rules adopted in Article 6 incorporate safety and health standards, as well as address other issues related to the administration of the Arizona OSHA Act (e.g. procedures for filing a discrimination or retaliation complaint under A.R.S. § 23-425). The rules are consistent with the legislative mandate and the five year review by the Governor's Regulatory Rule Council addressing this issue was last approved on January 4, 2020.
- Article 7, Self- Insurance requirements for Workers' Compensation Pools Organized Under A.R.S. § 23-961.01, R20-5-701 et seq., was repealed effective October 5, 2022.
- Article 8, Occupational Safety and Health Rules of Procedure before the Industrial Commission of Arizona, R20-5-801 et seq., last amended effective November 8, 2016. These rules address practice and procedure requirements for ADOSH hearings before an administrative law judge. The rules are consistent with the legislative mandate and the five year review by the Governor's Regulatory Rule Council addressing this issue was last approved on August 4, 2020.

- Article 9 expired February 4, 2000.
- Article 10, Wage Claims, R20-5-1001 et seq., last amended effective May 14, 2021. These rules address the procedural requirements for filing a wage claim. The rules are consistent with the legislative mandate and the five year review by the Governor's Regulatory Rule Council addressing this issue was last approved on August 4, 2020.
- Article 11, Self-Insurance for Individual Employers, R20-5-1 101 et seq., was repealed effective October 5, 2022.
- Article 12, Arizona Minimum Wage and Earned Paid Sick Time Practice and Procedure, R20-5-1201 et seq., last amended effective February 9, 2023. These rules implement the Arizona Minimum Wage Act and Earned Paid Sick Time rules. The rules are consistent with the legislative mandate and the five year review by the Governor's Regulatory Review Council addressing this issue was last approved on January 4, 2023.
- Article 13, Treatment Guidelines, R20-5-1201 et seq., last amended October 1, 2018 provides for the adoption of the official Disability Guidelines and the procedures for pre-authorization requests for medical treatment. The rules are consistent with the legislative mandate and the five year review by the Governor's Regulatory Review Council addressing this issue was last approved on April 5, 2022.
- Article 14, Municipal Firefighter Cancer Reimbursement Fund and Firefighter and Fire Investigator Cancer Claim Reporting, R20-5-1401 et seq., last amended effective June 10, 2022. These rules provide the procedures for requesting reimbursement for eligible compensation and benefits paid under A.R.S. § 231702(A) on claims pursuant to A.R.S. § 23.901.09, and the procedures for reporting eligible claims as outlined in A.R.S. § 23-971. The rules are consistent with the legislative mandate and the one year review by the Governor's Regulatory Review Council addressing this issue was last approved on February 7, 2023.
- Article 15, Workers' Compensation Self-Insurance, R20-5-1501 et seq., adopted effective October 5, 2022. These rules provide the requirements and procedures for eligible employers and pools, both public and private, who wish to self-insure for workers' compensation purposes. The rules are consistent with the legislative mandate. A one year review report is due to the Governor's Regulatory Review Council October 5, 2023.

Before initiating a rulemaking proposal, the Commission submits a request to the Governor's Office under A.R.S. § 41-1029(A), and before finalizing a rulemaking the Commission submits a request to the Governor's Office under A.R.S. § 41-1029(B) . All rulemaking is conducted in accordance with Title 41, therefore all updates go through the applicable rulemaking process.

5. THE EXTENT TO WHICH THE AGENCY HAS PROVIDED APPROPRIATE PUBLIC ACCESS TO RECORDS, MEETINGS AND RULEMAKINGS, INCLUDING SOLICITING PUBLIC INPUT IN MAKING RULES AND DECISIONS.

When proceeding with rulemaking the Commission complies with the rulemaking requirements of Title 41, publishing notices in the Arizona Administrative Register and providing opportunity for public comment throughout the process. This process is followed for all rulemakings, including those in which the Commission is required to adopt a federal safety and health standard under the state approved OSHA plan.³² Additionally, the Commission receives assistance and recommendations regarding rulemaking from the ADOSH Advisory Committee and the Boiler Advisory Board.

The Commission historically seeks more than the minimum required public comment from affected stakeholders on rulemakings that may have a significant impact. Prior to initiating such rulemakings, the Commission seeks the input and involvement of its stakeholders, which may be accomplished through stakeholder meetings, public hearings, and reaching out to specific affected stakeholders.

Developed in 2016 in response to the frequency of workplace safety violations and penalties in the roofing industry, specifically related to fall protection standards, the Commission initiated a Roofers Working Group Alliance of roofing employers. Meeting every month the group works with the Commission to develop, improve, and implement best practices for safety and compliance. As a result there has been a decrease in the rate of injuries and non-compliance with the safety standards.

In order to seek ongoing feedback from members of the legal community, a diverse cross section of those who represent injured workers, insurance carriers, and self-insured cities, towns, and private sector employers meet regularly with the Commission Administrative Law Judge leadership team to address issues related to the administrative hearing process at the Commission and to focus on ways to collaborate with the goal of improving the efficiency of Arizona's workers' compensation system.

Recently the Commission completed rulemaking merging three Articles (2,7, and 11) pertaining to different types of self-insured entities into one new Article (15). The planning process was lengthy, and prior to entering into the formal rulemaking process the Commission held numerous stakeholder meetings and adjusted the rulemaking based upon stakeholder feedback.

Currently the Commission is in the process of modernizing and streamlining Article 1, which primarily pertains to the claims' division processes and procedures for hearings before the Administrative Law Division. A stakeholder panel, that included representation from an applicant attorney, a defense attorney, the claims manager, an Administrative Law Judge and the Chief Counsel developed the initial draft of the amendments. Upon completion of the initial draft, additional stakeholders were invited to review the initial draft and provide suggestions. The

³² ADOSH has 6 months to adopt a federal standard or an Arizona standard that is at least as effective as the federal standard.

stakeholders included representation from large carriers, applicant advocacy groups, and the general insurance industry.

The Commission actively looks for opportunities to improve engagement with its stakeholders and makes it a priority to keep the public informed as to the Commission's activity and the impact that its activity may have on the public. This is accomplished through:

- Regularly updating information on its website, such as assessment rates, the state minimum wage, and the workers' compensation average monthly wage.
- Posting new and important information on its "public notices" and "recent news" links on its website.
- Posting all Commission agendas and minutes.
- Posting Fee Schedule information, reports, data, meeting transcripts, and public feedback on its website.
- Posting the agency rulemaking activity which includes an annual Regulatory Agenda and list of recent rulemakings with hyperlinks to the filings in the Arizona Administrative Register³³.
- Using Constant Contact® Registration and Notification. The Commission offers the public the ability to receive information directly by signing up for email updates that are used to notify the public of public hearings and other important activities of the Commission.
- Making publications, employer posters, and online fillable and electronically submittable forms available online and upon request for all Commission programs.
- Providing information through presentations, seminars and speeches. Some of these activities are described in the training and outreach activities of the Claims Division and ADOSH, which are described under question two on pages 9 and 22.

The Commission used some of the foregoing tools to keep the public informed of its activities with respect to the work of the Commission to update technology platforms which streamlined how the public interacts with the Commission. Specifically, the Commission posted information and documents online, presented information at seminars/conferences, and notified stakeholders of updates and training sessions through constant contact and its website.

Another example of the extent to which the Commission works to engage and inform the public is with respect to the Fee Schedule process, described under question two on page 12. This process provides information and an opportunity for extensive public participation. Each year, the

³³ <https://www.azica.gov/rulemaking-activity>

Commission publishes on its website a written analysis of issues along with staff recommendations. This document serves as a foundational document for public comment and future discussions that may arise during the interactive stakeholder meeting and the public hearing process. The Fee Schedule is posted on the Commission's website 30 days before a public hearing is held. Written comments are welcomed in advance of the public hearing and accepted until 10 days after the public hearing. All of the public comments received, including those received after the public hearing, are posted on the Commission's website so that the public has an opportunity to see and respond to other public comments made. Thereafter, at a later duly noticed public meeting, the Commissioners take official action on the Fee Schedule. All information pertaining to the Fee Schedule is posted online, and in a format that can be downloaded.

6. THE EXTENT TO WHICH THE AGENCY TIMELY INVESTIGATED AND RESOLVED COMPLAINTS THAT ARE WITHIN ITS JURISDICTION.

The Industrial Commission is provided both general and specific statutory authority to investigate and resolve complaints, whether such complaints are received from other persons or entities, or whether such complaints are initiated “on the Commission’s own motion.” As a result, the Commission is able to effectively investigate and resolve all complaints that are within its jurisdiction.

Under its general powers grant of authority, the Commission has the statutory power to conduct investigations. A.R.S. § 23-107(B) states, “upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee the Commission has the power, with or without notice, to make investigations necessary to determine the matter complained of.” This provision supplements the specific grants of authority provided to the Commission throughout Title 23, and would apply to complaints received falling outside of the specific grants of authority, such as investigations of youth labor complaints.

Under specific grants of statutory authority, the Commission conducts “complaint” inspections as part of its administration of the different programs under its jurisdiction. This includes inspection authority that is necessary to administer and enforce the requirements of the Workers’ Compensation Act, the Arizona Occupational Safety and Health Act, and programs administered by the State Labor Department. These statutory provisions allow the Commission or its delegated agents to conduct investigations, issue subpoenas for people or documents, and impose sanctions for non-compliance.

A. Administration of Workers’ Compensation System

Administrative Bad Faith and Unfair Claims Processing: The Commission is given the statutory authority to investigate administrative complaints of bad faith and unfair claims processing practices. A.R.S. § 23-930. If the Commission finds that bad faith or unfair claims processing practices has occurred in the handling of a particular claim, the applicable statute mandates the Commission award the injured worker, in addition to any benefits it finds are due and owing, a benefit penalty of

25% of the benefit amount ordered to be paid or \$500, whichever is greater. A.R.S. § 23-930(B). In FY23, the Commission:

- Investigated 32 complaints of bad faith/unfair claims processing practices, with the following administrative outcomes: 22 complaints were denied, and 10 complaints were deemed valid.

Request for Investigations Pursuant to A.R.S. § 23-1061(J): By statute, the Commission is charged with investigating and reviewing any workers' compensation claim in which it appears that the injured worker has not been granted benefits to which the injured worker is entitled. A.R.S. § 23-1061(J). Injured workers, or their representatives, are the only parties allowed to file a request for investigation under this statute. Issues subject to investigation vary greatly and include authorization for medical treatment and payment of indemnity benefits. In FY23, the Commission

- Received 1,196 requests for investigation which were processed within one business day 98% of the time.
- Requests for investigation were resolved in an average of 42 days.

Medical Bill Payment: Through its Medical Resource Office, the Commission provides assistance in the resolution of complaints that arise under the Fee Schedule. In FY23, the Commission:

- Received and provided assistance on 109 complaints concerning Fee Schedule disputes.

B. Administration of Safety and Health Programs

The Commission's powers to enforce the requirements of the Arizona Occupational Safety and Health Act, the Boiler Program and the Elevator Program are found in Title 23, Chapter 2, Articles 10, 11 and 12. Within each Article, ADOSH inspectors are given specific authority to conduct inspections, review documents and to make determinations regarding complaints filed with those Divisions.

- Under A.R.S. § 23-408(F), an employee or a representative of employees who believes that a violation of a safety or health standard or regulation exists that threatens physical harm or that an imminent danger exists, may request that ADOSH conduct an investigation. In FFY22, ADOSH received 963 complaints and responded to every complaint.
- Under A.R.S. § 23-425, any employee who believes that they were discharged or otherwise discriminated against by any person in violation of the Act may within 30 days after such violation occurs, file a complaint with the Commission alleging such discrimination. The administration of the ADOSH discrimination program is described under question two on page 20.

- Under A.R.S. § 23-477, a person may request that ADOSH investigate a boiler alleged to be unsafe. In FY23, ADOSH received 1 complaint which was under the jurisdiction of the Federal Consumer Product Safety Commission.
- Under A.R.S. § 23-491.08, a person may request that ADOSH investigate an elevator alleged to be unsafe. In FY23, ADOSH received 0 complaints.

C. Payment of Wages Enforcement

In accordance with A.R.S. Title 23, Chapter 2, Article 7 and Title 20, Chapter 5, Article 10 of the Arizona Administrative Code, the Industrial Commission Labor Department is required to investigate employee complaints for wages due up to \$5,000.00, and to make an administrative determination without a hearing as to the amount due, if any, up to \$5,000.00. In FY23, the Department

- Received 3,989 claims
- Closed 4,341 claims
- Issued 705 determinations in favor of employee (determinations in favor of the employee were made following a complete investigation of the wage claim. 252 determinations in favor of the employee were made because the employer failed to respond to the department.)
- Issued 731 determinations in favor of the employer (determinations in favor of the employer were made following a complete investigation of the wage claim.)
- All remaining claim closures were based on the employer paying the employee prior to determination, insufficient information to make determinations, lack of jurisdiction, etc.
- The average age of the oldest wage claim was 121 days.
- The average monthly pending wage claim age was 36 days.

D. Minimum Wage Law Enforcement

On November 7, 2006, Arizona voters approved Proposition 202, referred to as the “Raise the Arizona Minimum Wage for Working Arizonans Act.” Under the Act, which became effective January 1, 2007, the Commission was given the authority to enforce and implement Arizona minimum wage laws. On November 8, 2016, Arizona voters passed Proposition 206, the “Fair Wages and Healthy Families Act,” which increased the minimum wage hourly rate through 2020, with annual raises thereafter based on changes in the cost of living. The Fair Wages and Healthy Families Act continues to grant the Commission authority to enforce Arizona minimum wage laws.

In accordance with A.R.S. Title 23, Chapter 2, Articles 8 & 8.1, and Title 20, Chapter 5, Article 12 of Arizona Administrative Code, any person, or organization alleging a minimum wage violation may file a complaint with the Labor Department. After receiving or initiating a complaint, the Department will review and investigate the complaint and issue a findings and order setting forth its determination based on the information and arguments received during the investigation. In FY23, the Department

- Received 56 minimum wage claims.
- Closed 50 minimum wage claims (7 claims were resolved through mediation, 17 claims were closed with a finding of no-violation, 15 claims were issued as violation determinations. The remaining closures were based on the claim being withdrawn, unable to locate the employer, duplicates, etc.).
- The average age of the oldest minimum wage claim was 47 days.
- The average monthly pending minimum wage claim age was 23 days.

E. Earned Paid Sick Time

The Fair Wages and Healthy Families Act established new state law regarding earned paid sick time. In accordance with A.R.S. Title 23, Chapter 2, Articles 8 & 8.1, and Title 20, Chapter 5, Article 12 of Arizona Administrative Code, any person, or organization alleging an earned paid sick time violation may file a complaint with the Industrial Commission Labor Department or may file a civil lawsuit. After receiving or initiating a complaint, the Department will review and investigate the complaint and issue a findings and order setting forth its determination based on the information received during the investigation. In FY23, the Department

- Received 340 earned paid sick time claims
- Closed 358 earned paid sick time claims (33 claims were resolved through mediation, 197 claims were closed with a finding of no-violation, 56 claims were issued violation determinations. The remaining closures were based on the claim being withdrawn, unable to locate the employer, duplicates, etc.)
- The average age of the oldest earned paid sick time claim was 74 days.
- The average monthly pending paid sick time claim age was 29 days.

F. Minimum Wage and Earned Paid Sick Time Retaliation

The Fair Wages and Healthy Families Act prohibits an employer from retaliating or discriminating against an employee or former employee for exercising earned paid sick time or minimum wage

rights. In accordance with A.R.S. Title 23, Chapter 2, Articles 8 & 8.1, and Title 20, Chapter 5, Article 12 of Arizona Administrative Code, any person, or organization alleging a minimum wage or earned paid sick time retaliation violation may file a complaint with the Labor Department or may file a civil lawsuit. After receiving or initiating a complaint, the Department will review and investigate the complaint and issue a findings and order setting forth its determination based on the information received during the investigation. In FY23, the Department

- Received 140 retaliation claims
- Closed 131 retaliation claims (23 claims were resolved through mediation, 56 claims were closed with a finding of no-violation, 15 claims were issued violation determinations. The remaining closures were based on the claim being withdrawn, unable to locate the employer, duplicates, etc.)
- The average age of the oldest retaliation claim was 78 days.
- The retaliation claim average monthly pending retaliation claim age was 27 days.

G. Administration of Youth Labor Program

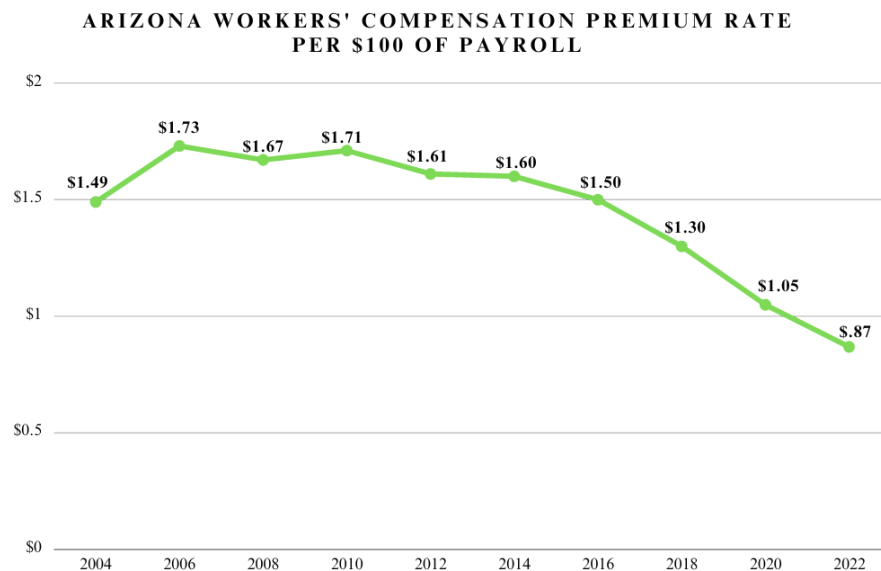
In accordance with A.R.S. Title 23, Chapter 2, Article 3, the Labor Department enforces laws prohibiting youth under the ages of 16 or 18 from employment in specified industries or areas of employment. Permissible hours of work for youth are also set by statute. The Department is authorized to issue administrative cease-and-desist orders to persons or entities reasonably believed to be violating applicable employment laws or regulations. In FY23, the Department

- Received and reviewed 743 injury reports involving minors (675 were deemed to not need an investigation, 31 were opened and fully investigated, the remaining are pending review).
- Received and investigated 43 public youth labor complaints.
- Closed 82 youth labor investigations (27 cases were issued violation determinations. 30 cases were closed with a finding of no-violation. The remaining closures were based on the youth being exempt, complaint was misfiled, variation obtained, etc.)
- The average age of the oldest youth labor case was 62 days.
- The average monthly pending youth labor case age was 30 days.

7. THE EXTENT TO WHICH THE LEVEL OF REGULATION EXERCISED BY THE AGENCY IS APPROPRIATE AS COMPARED TO OTHER STATES OR BEST PRACTICES, OR BOTH.

A. Administration of the Workers' Compensation System And Payment Of Special Fund Benefits

Workers' compensation is regulated at the state level and workers' compensation agencies, programs, policies, and procedures can vary widely across the country.³⁴ While there may be differences between insurance requirements, benefit levels, regulation of medical fees, or availability of “special fund” benefits, a prevailing commonality is that in every jurisdiction a state agency administers the workers' compensation laws of that state and regulates industry to ensure compliance with those laws. More specifically, state agencies regulate the industry to ensure that injured workers receive the medical and indemnity benefits that they are entitled to receive. Like Arizona, most jurisdictions allow for self-insurance authority and regulate the self-insurance program. Also like Arizona, most jurisdictions also impose civil penalties against employers that violate that jurisdiction's insurance law. All jurisdictions provide a forum for dispute resolution for workers' compensation issues.³⁵ Arizona's workers' compensation premium rate index per \$100 of payroll is \$0.87 as of 2022, ranking 44th, the 8th lowest in 51 jurisdictions³⁶.



The Commission's level of regulation in this area is consistent with, and in some respects, less than the regulation exercised in other jurisdictions. Arizona does not require excess insurance or require approval of a change in a self-insurer's self-insured retention, unlike a number of states. Arizona's model is one of ultimate good faith, where an insurer or self-insured employer issues a notice of claim status and a claimant can protest the notice if they disagree with the determination made. The

³⁴ IAIABC, WorkCompare Agencies, (www.iaiaabc.org/Work-Compare-Agenices); WCRI/IAIABC Workers' Compensation Laws as of January 1, 2022; National Academy of Social Insurance, (2020) Workers' Compensation Benefits, Costs, and Coverage, November 2022;

³⁵ Id.

³⁶ <https://www.oregon.gov/dCBS/reports/Documents/general/prem-rpt/22-2083.pdf>

Commission remains, however, actively involved in the process to ensure the timely delivery of benefits, with fewer disputes and reduced litigation. This distinguishes it from programs seen in other states. The Commission's involvement, which is described in greater detail in the answer to question two, includes:

- Active claims monitoring and enforcement, which includes ensuring that the information in the claims file is accurate and correct, notifying insurance carriers and self-insurers of a workers' compensation claim, monitoring responses to ensure compliance with the statutory 21 day requirement, monitoring the progress of accepted claims, auditing payor notices and issuing other notices.
- Providing information, training, and assistance.
- Issuing impartial loss of earning capacity awards that determine the amount of permanent disability benefits that are due.
- Assisting unrepresented applicants.

B. Administration of Occupational Safety and Health Programs

Arizona is one of twenty-seven states/territories that administer and enforce an OSHA program under a federally approved state plan.³⁷ Federal OSHA enforces occupational and safety health programs in those states that do not have approved state plans. To maintain its federal approval, a state plan program is required to be "at least as effective" as the federal program. While there continues to be, at times, difficulties with measuring and defining this effectiveness, every state plan, including Arizona, must develop and enforce safety and health standards that are at least as effective as the standards adopted by Federal OSHA. This does not necessarily mean that states are required to adopt safety standards that are identical to those adopted by Federal OSHA. Rather, a state may adopt a different occupational safety and health standard if the standard is determined to be at least as effective as the standard adopted by OSHA. What this means in the context of the question presented above, is that while there may be differences between state plans that are responsive to specific state issues, all state plan programs, including ADOSH, regulate occupational safety and health to be as effective as the federal program. ADOSH's regulation has resulted in a quality program that both protects employees and partners with employers and businesses to create safer workplaces.

ADOSH's regulation of boilers is very similar to other jurisdictions in almost all aspects, except the frequency of inspections performed on boilers and lined water heaters. The majority of states require biennial or triennial inspections of some sort, which is more frequent than the one-time

³⁷ Twenty-one states and one territory cover both private and public sector employees. Four states and one territory cover only public sector employees.

inspection at initial installation that is required in Arizona.³⁸ To ensure that the general public and employees continue to be protected from unsafe boilers, the Boiler Advisory Board has recommended that the inspection schedule for these items be changed from an initial one-time inspection, to an inspection every four years.

ADOSH's regulation of elevators is also very similar to other jurisdictions in most aspects. All states enforce some version of the ASME A17.1 Safety Code for Elevators and Escalators. Some states' authority to inspect elevators also includes the inspection of amusement and carnival rides and many states charge a fee for each annual elevator inspection that is conducted. ADOSH does not have jurisdiction to inspect amusement and carnival rides and does not charge an inspection fee.

C. Administration of Payment of Wages Laws

The enforcement of wage payment laws varies widely across the country. The majority of states regulate the payment of wages, with eight states providing no state enforcement. Arizona, along with thirteen other states, compels the employer to pay a penalty to the employee if the employer fails to pay the wages determined to be owed. Twenty-three states regulate employers through civil penalties and/or criminal sanctions without any penalty dollars being paid to the employee. Civil penalties in these states may range from \$100 to \$5,000. A violation of Arizona's wage payment statute is considered a petty offense. Five states do not provide for any penalty. In comparison, Arizona's regulatory authority on wage disputes and wage payment issues appears less regulated than other states.

Administration of the state's minimum wage laws seems to compare to other states. Ten states have a minimum wage linked to a Consumer Price Index, which is similar to Arizona. Currently, there are thirty states that have a minimum wage greater than the federal level and seven of those have the same or greater minimum wage than Arizona (\$13.85/hour). Most jurisdictions impose civil penalties ranging from \$250 up to \$1,000, which is similar to the civil penalties found in A.R.S. § 23-364(F). These penalties are assessed against an employer who violates such laws as recordkeeping, obstruction of an investigation, failure to pay minimum wage and retaliation.

D. Administration of Youth Labor Program

All states have laws regulating the hours and occupations of youth employment. These laws are very similar across the country and very similar to those on the federal level.³⁹ In addition to these laws, the majority of states also have laws requiring the issuance of a work permit before a youth is permitted to work.⁴⁰ Arizona regulates the hours and occupations of youth employment, but does not require a youth work permit.

³⁸The National Board of Boiler and Pressure Vessels Inspectors, NB-370 National Board Synopsis at <http://www.nationalboard.org/ViewAllSynopses.aspx>

³⁹ If there is a difference between federal and state law, then the stricter law will take precedence.

⁴⁰ Thirty four states require a youth employment work permit. Sixteen states (including Arizona) do not.

The majority of states impose a fine or civil penalty against an employer for violations of the applicable youth employment law. The amount of penalty varies greatly by state ranging from \$100 to \$10,000. Arizona's maximum penalty is \$1,000 and a violation is considered a class 2 misdemeanor. While Arizona's civil penalty is less than most states, the majority of states classify a youth employment violation as a misdemeanor. Lastly, the majority of states appear to have greater investigative authority than Arizona. Most state jurisdictions have specific authority to enter places of business, compel testimony, or compel business records to assist in the investigations, where Arizona does not.

E. Administration of Earned Paid Sick Time

Arizona is one of seventeen states with paid sick time laws. Arizona Earned Paid Sick Time law was created in 2016 by Proposition 206, the Fair Wages and Healthy Families Act. The accrual rate for earned sick time in Arizona is one hour for every 30 hours worked; this accrual rate is the same as in nine other states. The accrual rate in the remaining states are lower: one hour for every 35 hours (two states), one hour for every 40 hours (three states), and one hour for every 52 hours (two states).

Most of the states allow for a yearly maximum of 40 hours of earned paid sick time usage (nine states).⁴¹ A few states allow for a greater annual usage allowance: 48 hours (two states) and up to 56 hours⁴² (one state). One state allows for a yearly maximum usage of 24 hours. Two states do not have a maximum annual usage provision. Arizona uses a two tiered system, where employees working in a business with under 15 employees can use 24 hours annually, and employees working in a business with 15 or more employees can use 40 hours annually.

Recent rule changes have lessened the burden of record-keeping on Arizona employers. Additionally, Arizona's Earned Paid Sick Time law allows for employers and employees to "expressly waive" its requirement through a collective bargaining agreement.⁴³ Overall Arizona's Earned Paid Sick Time law is consistent with the regulation exercised by the states which have paid sick time laws.

8. THE EXTENT TO WHICH THE AGENCY HAS ESTABLISHED SAFEGUARDS AGAINST POSSIBLE CONFLICTS OF INTEREST.

Consistent with A.R.S. §§ 38-501 through 38-511, the ICA Chairman and Commissioners review the upcoming agendas for the Commission meetings, and, often in consultation with the ICA Chief Legal Counsel, self-report potential conflicts of interest using a form developed by the Commission. Once a potential conflict is identified, the Chairman and/or Commissioners refrain from participating in the discussion and action of the matter identified.

⁴¹ Several states, including Arizona, allow for more generous policies at the election of the employer, both in usage and in accrual rate.

⁴² New York allows for 40 hours usage for companies with under 100 employees, and 56 hours usage for companies with more than 100 employees.

⁴³ A.R.S. § 23-381

The Special Fund Investment Committee utilizes a conflict check, consistent with the conflict checks required by the State Procurement Office when seeking an investment advisor and investment managers to ensure there is neither a personal, nor professional conflict that would impact their performance.

Consistent with A.R.S. § 41-2616(C), evaluation committee members must sign an acknowledgement that they have disclosed any potential conflict of interest, specifically that they are neither (1) currently employed by, nor are they receiving any compensation from, any proposer, (2) they have not been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with any proposal or involved Proposer in return for favorable consideration, (3) they have no preconceived position on the relative merits of any of the proposals, and (4) they have not established a personal preference or position on the worth or standing of any Offeror participating in the action.

Additionally, they affirm that they will have no impermissible contact with any representative of a competing offeror related to the particular procurement during the course of evaluation of proposals. Permissible contacts under A.R.S. §§ 41-2534, 41-2537, 41-2538 and 41-2578 need not be disclosed.

For current and potential employees of the ICA, to identify and avoid potential conflicts of interest stemming from secondary employment, all employees must complete two forms: an Outside (Secondary) Employment form which needs Director approval to ensure that the secondary employment does not conflict with agency processes; new hires complete a Disclosure Statement which acknowledges that the new hire does not currently have any outside employment or business interests that may have a substantial interest in any contract, sale, purchase or service involving the State of Arizona, and a Loyalty Oath pursuant to A.R.S. § 38-231. Additionally, the Commission Code of Conduct policy states that: "1. Whether on or off duty, conduct oneself in a manner that will not bring discredit or embarrassment to the Agency or the State of Arizona. 2. Do not permit oneself to be placed under any kind of personal obligation which could lead any person to expect official favors. 3. Do not accept or solicit from anyone, either directly or indirectly, anything of economic value such as a gift, gratuity, favor, entertainment, or loan, which is or may appear to be, designed to influence one's official conduct."

9. THE EXTENT TO WHICH CHANGES ARE NECESSARY FOR THE AGENCY TO MORE EFFICIENTLY AND EFFECTIVELY FULFILL ITS KEY STATUTORY OBJECTIVES AND PURPOSES OR TO ELIMINATE STATUTORY RESPONSIBILITIES THAT ARE NO LONGER NECESSARY.

The Commission believes that it is able to comply with the sunset factors under the current statutory framework.

10. THE EXTENT TO WHICH THE TERMINATION OF THE AGENCY WOULD SIGNIFICANTLY AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE.

Termination of the Commission would likely cause significant harm to public health, safety and welfare as the Commission is the agency responsible to administer, enforce or regulate laws that were enacted to protect the health, safety, or welfare of employees, the public or children.

A. Administration of the Workers' Compensation System

Article 18, Section 8 of the Arizona Constitution requires the enactment of a Workers' Compensation Law for all public employees and for private sector employees as determined by the Legislature. While the Commission is not constitutionally created, the Commission was established in 1925 as a result of legislation implementing that constitutional mandate. As described in detail in response to question two, the Commission performs a critical role in the delivery of workers' compensation benefits. The Commission not only oversees and regulates the industry to ensure that claims are processed in accordance with the law; the Commission also makes determinations and takes actions critical to the delivery of workers compensation benefits (e.g. notification of claims, determination of loss of earning capacity, average monthly wage determinations, etc.). Termination of the Commission, without otherwise providing for the administration, enforcement and regulation provided by the Commission, would result in injured workers not receiving or experiencing delays in receiving essential medical and wage loss benefits. Without medical care or wage replacement income, injured workers would face incredible physical and economic hardship.⁴⁴ In short, there would be a direct and substantial impact on the health and welfare of Arizona's injured workers if the Commission were terminated.

If the Commission were terminated, the ensuing negative impact on the workers' compensation system would likely result in more private employees rejecting the benefits of the Workers' Compensation Act, and electing to sue their employer in Superior Court for work related injuries. This means that employers would lose their "exclusive remedy" protection, which is available if a private employee does not reject the Act. Civil litigation for work related injuries would be costly and burdensome, and would delay the delivery of medical care and wage replacement benefits. It is also believed that insurance costs would increase due to the loss of the exclusivity protection of the workers' compensation system. Lastly, terminating the Commission could result in constitutional challenges if the impact of such a termination results in a lack of due process or a system that fails to fairly compensate injured workers. It is believed that this would have a direct and substantial impact on the welfare of both employers and employees.

B. Administration of Special Fund Benefits

⁴⁴ Injured workers rely on these critical benefits for medical care and income. If they do not receive these benefits, they would likely look to other resources to fill the gap. Other resources could include looking to AHCCCS or other public assistance.

If the Commission were terminated, the delivery of benefits provided by the Special Fund would end. As described in detail in response to question two, the Special Fund provides workers' compensation benefits to employees in certain statutorily mandated cases. Without these benefits, injured workers would face incredible hardship, both from physical and economic perspectives.⁴⁵ The Special Fund also provides vocational rehabilitation benefits to qualified injured workers. These benefits enable injured workers to return to productive work. Termination of these benefits would reduce the number of injured workers that are able to return to the workforce. It is believed that there would be a direct and substantial impact on the health and welfare of injured workers if these benefits were not provided because the Commission was terminated.

C. Administration of Safety and Health Programs

The Commission, through ADOSH, is responsible for enforcing occupational safety and health standards in all public and private sector workplaces in Arizona.⁴⁶ ADOSH enforces these standards under a federally approved state plan, with the goal of eliminating workplace injuries, illnesses and fatalities. The Arizona state plan retains its federal approval to enforce the Arizona OSHA program as long as it remains "at least as effective as" the federal program. If the Commission were terminated, there would be no enforcement of the state OSHA program. Federal OSHA would initiate proceedings that would result in Federal OSHA assuming jurisdiction to enforce OSHA standards in Arizona. Federal enforcement of the OSHA program would result in:

- The loss of local control of the Arizona state program.
- Higher litigation costs.
- Federal OSHA does not have jurisdiction over public employees. Therefore, workplace safety and health issues for political subdivisions would not be addressed by Federal OSHA. Public employees would therefore be at greater risk for injury and illness, resulting in higher workers compensation costs for public entities and, ultimately, taxpayers.
- Arizona employers would have to travel to San Francisco to contest citations.
- The loss of public accessibility and local involvement in the program.⁴⁷

⁴⁵ Injured workers rely on these critical benefits for medical care and income. If they do not receive these benefits, they would likely look to other resources to fill the gap. Other resources could include looking to AHCCCS or other public assistance.

⁴⁶ The Arizona state plan does not apply to federal government workers and areas under exclusive federal jurisdiction, which includes employment on Indian Lands, copper smelters, and concrete and asphalt batch plants that are physically located within mine property.

⁴⁷ The five member Commission approves penalty assessments over \$2,500. At the Commission's publicly noticed weekly meetings, the ADOSH Director is required to present a prima facie case for the issuance of penalties. Based upon the facts presented, the Commission approves, remands or modifies the proposed penalties. This level of public accessibility would not be present if Federal OSHA assumed jurisdiction of the program.

As described more fully in the answer to question two, through its consultation program, ADOSH also provides free safety and health visits, outreach and training to both employers and employees. As noted above, the goal of ADOSH is to eliminate workplace injuries, illnesses and fatalities by making workplaces safer. The services provided through the consultation program are critically important in meeting this goal. Through its consultation programs, employers and employees learn how to work safely by developing and implementing programs designed to help reduce injuries and illnesses within the workplace. The programs increase awareness of hazards that are common in industry settings. The termination of the Commission would result in the elimination of these programs, which could result in an increase in injuries to employees and an increase in costs to businesses.

ADOSH is responsible for overseeing and certifying boiler safety inspections. This program is designed to protect the general public from unsafe boilers or lined hot water storage heaters. If the Commission was terminated this oversight would not occur.

ADOSH is also responsible for performing elevator inspections. The elevator inspection program is intended to protect the general public from injury or death resulting from unsafe elevators. If the Commission is terminated, then inspections of elevators would cease. The general public would then be exposed to unsafe elevators, which could result in serious bodily injury or death in the event of an accident. Additionally, termination of this program would likely result in an increase in insurance rates to cover liability associated with elevators.

It is believed that elimination of the administration of safety and health programs would result in a direct and substantial impact on the safety, health and welfare of the public.

D. Administration of Payment of Wages and Earned Paid Sick Time Law

The termination of the Commission would result in the loss of a forum to administratively and quickly resolve wage and earned paid sick time disputes. Employees seeking to recover wages owed and earned paid sick time or are facing potential retaliation or discrimination for exercising their rights in these areas would be forced to resolve their disputes in a civil action, which could result in a delay and undue expense.

Additionally, under the Arizona Minimum Wage Act, the Commission is given the responsibility to enforce and implement the provisions of the state minimum wage law. If the Commission is terminated, then employees are without a state remedy to enforce the minimum wage law and they would be forced to resolve their disputes in a civil action or through the Federal Wage and Hour Division. Significant harm can result to the welfare of employees if they are not paid (or not timely paid) their wages or given the earned paid sick time they are entitled to receive under these programs.

E. Administration of Youth Labor Program

The termination of the Commission would result in the elimination of state enforcement of the Arizona Youth Employment Laws. While the Federal Department of Labor would retain jurisdiction to investigate and enforce federal youth employment laws, the elimination of state oversight could result in an increase of injuries and illnesses to children under the age of 18.

ADDITIONAL QUESTIONS

1. **THE EXTENT TO WHICH THE AGENCY POTENTIALLY CREATES UNEXPECTED NEGATIVE CONSEQUENCES THAT MIGHT REQUIRE ADDITIONAL REVIEW BY THE COR, INCLUDING INCREASING THE PRICE OF GOODS, AFFECTING THE AVAILABILITY OF SERVICES, LIMITING THE ABILITIES OF INDIVIDUALS AND BUSINESS TO OPERATE EFFICIENTLY AND INCREASING THE COST OF GOVERNMENT.**

The Commission is unaware of any potential unexpected negative consequences resulting from the exercise of its statutory duties and responsibilities.

2. **THE EXTENT TO WHICH THE AGENCY HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES.**

The Commission has not sought statutory changes to address deficiencies in its enabling statutes. There have, however, been changes in the laws that have impacted the programs administered by the Commission. While not addressing deficiencies, the following legislation significantly impacted the statutory mandate of the Commission.⁴⁸

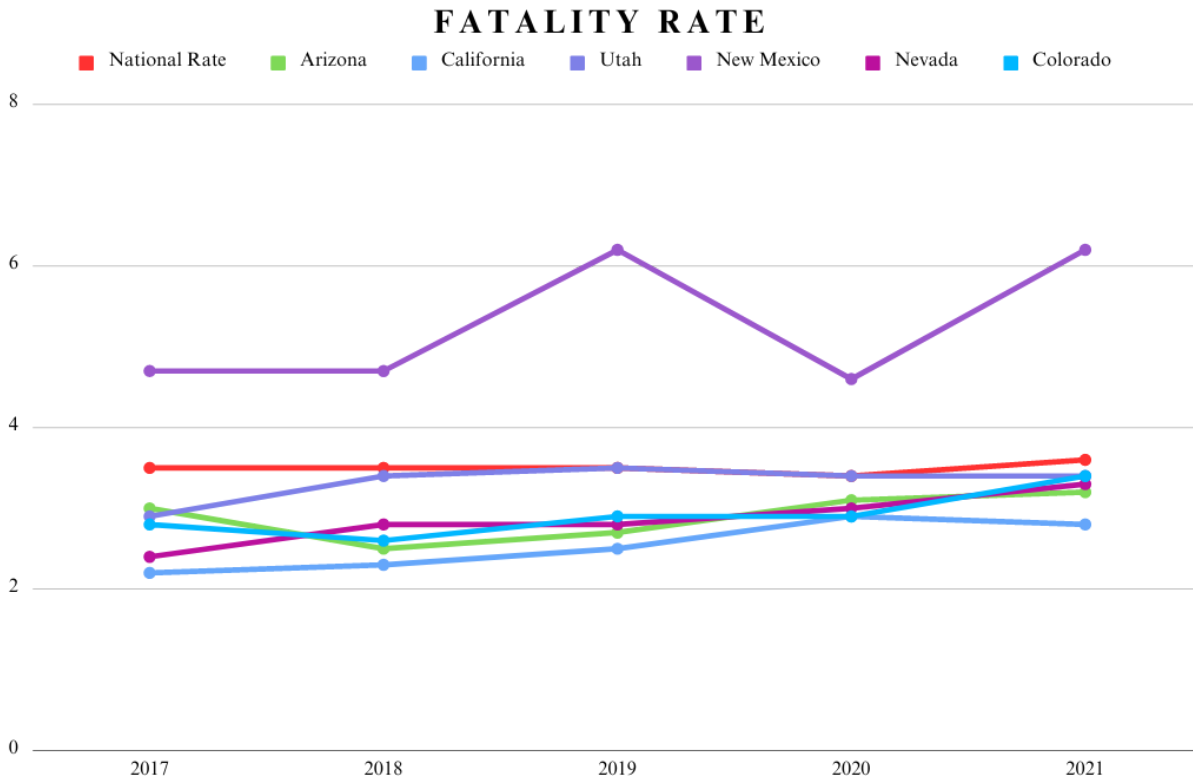
On November 8, 2016, the Arizona voters approved Proposition 206, referred to as “The Fair Wages and Healthy Families Act.” The Act established a new state minimum wage each year through 2020, with annual raises thereafter based on the increase in the cost of living. It also entitled employees to accrue earned paid sick time. A.R.S. §§ 23-362 and 23-364 enabled the Commission to enforce and implement this Act. The Commission amended A.A.C. Title 20, Chapter 5, Article 12, effective October 3, 2017, to include rules related to this Act.

On June 26, 2023, Governor Katie Hobbs signed SB1164, “Workers’ Compensation; Fraud Investigations; Adjudications,” codified in A.R.S. § 23-934. The new statute directs the Commission to establish a fraud unit, for the purpose of investigating fraudulent activities, statements, or representations made in connection with workers’ compensation claims.

The objectives of the agency, stated in quantitative and qualitative terms, are presented in response to question two. It should be noted, however, that notwithstanding the recent pandemic, the Commission continues to deliver mission critical services that contribute to Arizona having one of the strongest workers’ compensation programs in the country, offering value to both employers and

⁴⁸ A summary of the workers’ compensation legislative changes is found in Appendix E.

employees. Over the past several years, employers have experienced low assessment rates, injured employees continue to receive quality medical care and indemnity benefits in an environment that ensures that their claims are processed in accordance with the law, and the Special Fund remains actuarially sound. Additionally, for nearly forty years, Arizona has operated an effective State OSHA plan, with most statewide fatality and injury and illness rates at or below national rates across the country.⁴⁹



Succession planning continues to be an important initiative for the Commission. Included under this initiative are efforts previously taken to update and document all mission critical processes through the establishment of standard work documentation, cross training of staff, and strengthening of leadership training. All divisions are committing resources to this initiative and each Division Manager plays a role in its success.

The Commission anticipates that it will continue to provide quality programs, achieve further efficiencies, and continue the goal of continual improvement in service to the Arizonans who depend on our agency.

3. THE EXTENT TO WHICH THE AGENCY HAS DETERMINED WHETHER THE ATTORNEY GENERAL OR ANY OTHER AGENCY IN ARIZONA HAS THE AUTHORITY TO PROSECUTE OR INITIATE ACTIONS.

⁴⁹ See Appendix F, U.S. Department of Labor, Bureau of Labor Statistics, Fatality Rates

The Commission has statutory authority to pursue different types of civil action resulting from the exercise of its administrative authority. In-house legal counsel represents the Commission in these matters. This would include the following:

- Issuance and prosecution of citations and penalties under the Arizona Occupational Safety and Health.
- Applying to Superior Court for an injunction against continued refusal to permit an inspection by ADOSH under A.R.S. § 23-408.
- Applying to Superior Court under A.R.S. § 23-419 for an injunction to require correction or removal of a danger in a place of employment that could cause immediate death or serious physical harm.
- Applying to Superior Court for an injunction to prohibit an owner or operator of a boiler or elevator from engaging in acts in violation of a condemnation notice or notice of safety violations. A.R.S. § 23-478; A.R.S. § 23-491.09.
- Applying to Superior Court for injunctive relief to enforce orders of the Commission (youth employment cease and desist). A.R.S. § 23-238.
- Obtaining court enforcement of cease and desist orders and penalties issued under A.R.S. § 23-236 (youth employment violations).
- Applying to Superior Court for contempt of court for failure of a witness to comply with a subpoena issued by the Commission. A.R.S. § 23-432.
- Applying to Superior Court for an injunction to prohibit an employer from operating a business without workers' compensation insurance. A.R.S. § 23-407(F).

In addition to civil penalties that may arise from violations of Title 23 statutes under the Commission's jurisdiction, criminal penalties may also result. Some are deemed to be petty or misdemeanor offenses⁵⁰, while others are considered to be felony offenses⁵¹. The Commission has the authority to initiate and prosecute criminal violations under the Arizona Occupational Safety and Health Act. A.R.S. § 23-428. In light of the criminal penalties that may result, ADOSH will notify the Attorney General of all fatalities and all citations in which the violation has been classified as willful and resulted in serious injury or death.

Additionally, upon request by the Commission, the Attorney General and a County Attorney under the direction of the Attorney General has the authority to institute and prosecute the necessary actions to enforce the requirements of the Workers' Compensation Act. A.R.S. § 23-929.

⁵⁰ A.R.S. § 23-239, A.R.S. § 23-329, A.R.S. § 23-408, A.R.S. § 23-418(F)(G)

⁵¹ A.R.S. § 23-418(E), A.R.S. § 23-932, A.R.S. § 23-967, A.R.S. § 23-970, A.R.S. § 23-1028

4. THE CONSEQUENCES OF ELIMINATING THE AGENCY OR CONSOLIDATING IT WITH ANOTHER AGENCY.

The consequences of eliminating the Commission are described in the answer to question ten. Consolidating the Commission with another agency may present the following challenges and complexities that would need to be considered:

- From an organizational standpoint, the Commission is overseen by a five-member Governor appointed body that is actively involved in the policy making and performance of statutory duties. Consolidation with another agency would require statutory amendments and a restructuring of the organizational framework to avoid conflicts in operational authority.
- From a fiscal standpoint, the Commission is a non-general fund, self-supporting agency that is funded from assessments on the industry. Consolidating with another agency that is supported from the general fund or through different assessments would result in differing accounting systems that would need to be addressed.
- The work processes, practices and infrastructure of the Commission are specific to the operations of the Commission and may or may not be available within another agency of state government. A small change could significantly affect the connectivity among these systems if they were moved to a different kind of datacenter environment without an existing Salesforce platform. Additionally, consolidation of the Commission's datacenter with an older legacy data center would likely require substantial redesign in order to implement business services in a single new location for the agencies involved. This could be difficult, time-consuming, and expensive to undertake.
- The Commission, through ADOSH, is recognized by Federal OSHA as the State designee for purposes of the federally approved state OSHA plan. The federal grants under which the state plan receives grant funding recognizes that designation. If the Commission were consolidated with another agency, then the relationship of the new agency to the Commission and ADOSH would have to be addressed with Federal OSHA to resolve potential conflicts and concerns that Federal OSHA may have regarding operational matters and overall effectiveness. Additionally, the regulatory component of the program would also need to be considered since the Commission has jurisdiction to inspect all public entities in Arizona. Lastly, any change would require an amendment to the State Plan, which is subject to review and approval by Federal OSHA.

ADDITIONAL OCCUPATIONAL REGULATION QUESTIONS

Under A.R.S. § 23-485 ADOSH issues certificates as special boiler inspectors to an inspector of any company that has received a certificate of accreditation from either the national board of boiler and pressure vessel inspectors or the American society of mechanical engineers as an authorized inspection agency or an owner-user inspection organization, upon the request of the company. Pursuant to A.R.S. § 23-23-474, the Industrial Commission of Arizona shall (1) administer this article (Title 23, Article 11) through the division of occupational safety and health (ADOSH) (2) adopt standards and regulations pursuant to section 23-475 and adopt other rules as are necessary, and (3) exercise other powers as are necessary to carry out the duties and requirements of this article.

1. THE EXTENT TO WHICH THE OCCUPATIONAL REGULATION MEETS THE REQUIREMENTS OF A.R.S. § 41-3502.

The regulation of boiler inspectors meets the requirements of A.R.S. § 41-3502 because there is credible evidence of harm that if boilers were unregulated there would be a threat to the public health, safety or welfare in this state. The actual or anticipated public benefit of the regulation clearly exceeds the costs imposed on consumers, businesses and individuals. The public needs and can reasonably be expected to benefit from safe boilers. The current regulations are the least restrictive regulations, which still provide safety for the public.

2. THE EXTENT TO WHICH THE FAILURE TO REGULATE A PROFESSION OR OCCUPATION WILL RESULT IN:

a. THE LOSS OF INSURANCE

Insurers would be less likely to insure buildings if the boilers within the buildings were not considered safe.

b. AN IMPACT TO THE ABILITY TO PRACTICE IN OTHER STATES OR AS REQUIRED BY FEDERAL LAW

There is no impact to the ability to practice in other states through our regulation of boiler inspectors.

c. AN IMPACT TO THE REQUIRED LICENSURE OR REGISTRATION WITH THE FEDERAL GOVERNMENT

There is no impact, because boiler inspectors are not regulated by the Federal government.

d. THE LOSS OF CONSTITUTIONALLY AFFORDED PRACTICES

There are no constitutionally afforded practices that are affected by regulating boiler inspectors.

**SUNSET FACTOR ANALYSIS OF THE
ARIZONA OCCUPATIONAL SAFETY AND HEALTH ADVISORY COMMITTEE**

The Arizona Occupational Safety and Health Advisory Committee (“Committee”) was established in 1972 under A.R.S. § 23-409(A) to provide recommendations and assistance to the Industrial Commission of Arizona (“Commission”) in the drafting of standards, guidance, and regulation. The Committee also performs other functions as necessary.

The Committee consists of a reasonably balanced representation of persons knowledgeable in safety and health appointed by the Commission. The number of members on the Committee is not specified by statute so long as it is a reasonably balanced representation of regulated industries, including agriculture, labor and persons knowledgeable in safety and health. The Committee is currently composed of eight voting members. By statute, the ADOSH Director serves as a non-voting “ex-officio member” of the Committee. A.R.S. § 23-409(B). The current members of the Committee are:

Robyn Steiner, Chair	Safety Professional
Amber Pappas	Agriculture
Paul McKee	Public Service
Steve Ranks	Labor
James Biddle	Public University
Stacia Johannsson	Manufacturing
Anthony Dominguez	Local Government
Robert Duffy	Local Government

Committee members serve voluntarily and receive no compensation except for travel.

1. **THE KEY STATUTORY OBJECTIVES AND PURPOSES IN ESTABLISHING THE AGENCY.**

The Arizona Occupational Safety and Health Advisory Committee (“Committee”) was established in 1972 under A.R.S. § 23-409(A) to provide recommendations and assistance to the Industrial Commission of Arizona (“Commission”) in the drafting of standards, guidance, and regulations. The Committee may perform other functions as necessary.

2. **THE AGENCY’S EFFECTIVENESS AND EFFICIENCY IN FULFILLING ITS KEY STATUTORY OBJECTIVES AND PURPOSES.**

The Committee meets on an as needed basis, and is currently meeting quarterly. Committee meetings are open to the public and subject to the open meeting laws. The time and location of each meeting are published in a combined notice and agenda for that meeting. The Notice and Agenda are published at least 24 hours in advance of each meeting and are available for download on the Commission’s website at www.azica.gov/

Committee meetings may consist of discussions of new Federal Occupational Safety and Health standards, and the impact that adoption of such standards may have on the industry. The Committee may also discuss other safety and health issues as requested or needed. As an example, ADOSH and the Committee worked on determining ways to improve safety at warehouses and the way employees retrieve products from storage racks. The Committee held several meetings to discuss the issue and provided information in an ADOSH newsletter and distributed guidelines to employers including information on how to prevent hazards. The Committee has met its legislative mandate.

3. **THE EXTENT TO WHICH THE AGENCY'S KEY STATUTORY OBJECTIVES AND PURPOSES DUPLICATE THE OBJECTIVES AND PURPOSES OF OTHER GOVERNMENTAL AGENCIES OR PRIVATE ENTERPRISES.**

The Commission is unaware of other governmental agencies or private enterprises performing similar activities as the Committee.

4. **THE EXTENT TO WHICH RULES ADOPTED BY THE AGENCY ARE CONSISTENT WITH THE LEGISLATIVE MANDATE.**

Since the Committee is advisory and not regulatory, this factor is not applicable. See Sunset Factor Analysis for the Commission.

5. **THE EXTENT TO WHICH THE AGENCY HAS PROVIDED APPROPRIATE PUBLIC ACCESS TO RECORDS, MEETINGS AND RULEMAKINGS, INCLUDING SOLICITING PUBLIC INPUT IN MAKING RULES AND DECISIONS.**

Committee members are appointed by the Commission and represent affected industries. The constituencies represented by these members provide a mechanism to further involve the public with respect to recommendations made for proposed rulemaking. The Committee will also solicit additional input from the public as needed.

As an example, the Committee was tasked with assisting in communicating ADOSH's need for COVID-19 Program and Plan development. The Committee, representing a diverse group of industries, communicated with stakeholders to learn more about practices and procedures for reducing COVID-19 illnesses. The Chair of the Committee reached out to the Arizona Governmental Safety Association (AGSA), a collection of safety and health professionals working for cities and counties across Arizona, for additional strategies to reduce employees to exposures. ADOSH benchmarked a few of the strategies and included them in program and plan templates. See Sunset Factor Analysis for the Commission for more information.

6. **THE EXTENT TO WHICH THE AGENCY TIMELY INVESTIGATED AND RESOLVED COMPLAINTS THAT ARE WITHIN ITS JURISDICTION.**

Since the Committee is advisory and not regulatory, this sunset factor is not applicable.

7. **THE EXTENT TO WHICH THE LEVEL OF REGULATION EXERCISED BY THE AGENCY IS APPROPRIATE AS COMPARED TO OTHER STATES OR BEST PRACTICES, OR BOTH.**

Since the Committee is advisory and not regulatory, this sunset factor is not applicable.

8. **THE EXTENT TO WHICH THE AGENCY HAS ESTABLISHED SAFEGUARDS AGAINST POSSIBLE CONFLICTS OF INTEREST.**

Although the Committee is advisory, and not regulatory, members are expected to disclose conflicts of interest and recuse themselves as appropriate.

9. **THE EXTENT TO WHICH CHANGES ARE NECESSARY FOR THE AGENCY TO MORE EFFICIENTLY AND EFFECTIVELY FULFILL ITS KEY STATUTORY OBJECTIVES AND PURPOSES OR TO ELIMINATE STATUTORY RESPONSIBILITIES THAT ARE NO LONGER NECESSARY.**

The Commission believes that the Committee is able to comply with the sunset factors under the current statutory framework as an advisory body.

10. **THE EXTENT TO WHICH THE TERMINATION OF THE AGENCY WOULD SIGNIFICANTLY AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE.**

The Committee allows for greater industry participation in the adoption of standards, rules, and regulations that impact their respective constituencies. The Committee also provides another important forum for industry and public input regarding safety and health issues. Lastly, the Committee provides invaluable expertise and industry insight, which is necessary to ensure a strong and effective state OSHA plan.

ADDITIONAL QUESTIONS

1. **THE EXTENT TO WHICH THE AGENCY POTENTIALLY CREATES UNEXPECTED NEGATIVE CONSEQUENCES THAT MIGHT REQUIRE ADDITIONAL REVIEW BY THE COR, INCLUDING INCREASING THE PRICE OF GOODS, AFFECTING THE AVAILABILITY OF SERVICES, LIMITING THE ABILITIES OF INDIVIDUALS AND BUSINESSES TO OPERATE EFFICIENTLY AND INCREASING THE COST OF GOVERNMENT.**

The Commission is unaware of any negative consequences created by the Committee. The Committee provides recommendations and assistance to the Commission in the drafting of standards, guidance, rules and regulations. The Committee may perform other functions as necessary.

2. **THE EXTENT TO WHICH THE AGENCY HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES.**

The Commission has not identified deficiencies or sought statutory changes in the enabling statutes of the Committee.

3. **THE EXTENT TO WHICH THE AGENCY HAS DETERMINED WHETHER THE ATTORNEY GENERAL OR ANY OTHER AGENCY IN ARIZONA HAS THE AUTHORITY TO PROSECUTE OR INITIATE ACTIONS.**

Since the Committee is advisory and not regulatory, this sunset factor is not applicable.

4. **THE CONSEQUENCES OF ELIMINATING THE AGENCY OR OF CONSOLIDATING IT WITH ANOTHER AGENCY.**

The Committee provides extensive industry knowledge and experience which assists the Commission in addressing occupational safety and health issues, including the adoption of standards, guidance, rules and regulations. While the Commission would continue to seek input from the industry, termination of the Committee would result in an invaluable loss to the State OSHA Plan. Because the Committee is advisory and not regulatory in nature, consolidating the Committee with another agency or committee would require a clear statement of functions and responsibilities to ensure that the Committee continues to fulfill its important statutory mandate. Additionally, because the Committee is a component of the federally approved state OSHA plan, termination or consolidation of this Committee with another agency would require an amendment to the State Plan, which is subject to review and approval by Federal OSHA. See Sunset Factor Analysis for the Commission for more information.

ADDITIONAL OCCUPATIONAL REGULATION QUESTIONS

1. **THE EXTENT TO WHICH THE OCCUPATIONAL REGULATION MEETS THE REQUIREMENTS OF A.R.S. § 41-3502.**

Since the Committee does not administer an occupational regulation, this sunset factor is not applicable.

2. **THE EXTENT TO WHICH THE FAILURE TO REGULATE A PROFESSION OR OCCUPATION WILL RESULT IN:**

- a. THE LOSS OF INSURANCE
- b. AN IMPACT TO THE ABILITY TO PRACTICE IN OTHER STATES OR AS REQUIRED BY FEDERAL LAW
- c. AN IMPACT TO THE REQUIRED LICENSURE OR REGISTRATION WITH THE FEDERAL GOVERNMENT
- d. THE LOSS OF CONSTITUTIONALLY AFFORDED PRACTICES

Since the Committee does not administer an occupational regulation, this sunset factor is not applicable.

**SUNSET FACTOR ANALYSIS OF THE
ARIZONA BOILER ADVISORY BOARD**

The Arizona Boiler Advisory Board (“Board”) was established in 1977 under A.R.S. § 23-474(2) to assist the Industrial Commission of Arizona (“Commission”) in the drafting standards and regulations related to boilers, lined hot water heaters, and pressure vessels (“boilers”).

The Board consists of 5 members appointed by the Commission. Under A.R.S. § 23-486, the Board shall be composed of persons in the boiler industry and shall be balanced in representation with respect to industry, owner/operators, utility, contractor, and insurance. The current members of the Board are:

Raymond Choi	Insurance
Sheldon Lee	Public Utility
John Soldinski	Licensed Contractor
Bake Shaffer	Owner/Operator
Dean McCook	Industry

Board members serve voluntarily and receive no compensation except for travel.

1. **THE KEY STATUTORY OBJECTIVES AND PURPOSES IN ESTABLISHING THE AGENCY.**

The Boiler Advisory Board was created under A.R.S. § 23-474(2). Its statutory purpose is to assist the Commission in the drafting of standards and regulations for boilers, lined hot water heaters and pressure vessels (“boilers”).

2. **THE AGENCY’S EFFECTIVENESS AND EFFICIENCY IN FULFILLING ITS KEY STATUTORY OBJECTIVES AND PURPOSES.**

The Board is required to meet annually and at such other times as is appropriate. A.A.C. R20-5-403(B). Board meetings are open to the public and subject to the open meeting laws. The time and location of each meeting are published in a combined notice and agenda for that meeting. The Notice and Agenda are published at least 24 hours in advance of each meeting and are available for download on Commission’s website at <http://www.azica.gov/>

Board meetings generally consist of discussion of current changes and/or addendums of codes and standards that affect new installations and repair of boilers. The Board also discusses current state and national trends of boiler violations and deficiencies. In FY20 and FY21, the Board met to discuss Article 4 and necessary improvements. The Board discussed ways to add language that was consistent with the national consensus standards and helped to clean up outdated language. The result was a Rule that was submitted for review by the Governor's Regulatory Review Council

(GRRC) and updated by the Secretary of the State for approval in FY 23. The Board has met its statutory objective and purpose.

3. THE EXTENT TO WHICH THE AGENCY'S KEY STATUTORY OBJECTIVES AND PURPOSES DUPLICATE THE OBJECTIVES AND PURPOSES OF OTHER GOVERNMENTAL AGENCIES OR PRIVATE ENTERPRISES.

The National Board of Boiler and Pressure Vessel Inspectors⁵² also provides assistance to the Commission in providing information related to emerging issues or practices taking place across North America.

4. THE EXTENT TO WHICH RULES ADOPTED BY THE AGENCY ARE CONSISTENT WITH THE LEGISLATIVE MANDATE.

Since the Board is advisory and not regulatory in nature, this factor is not applicable. See Sunset Factor Analysis for the Commission.

5. THE EXTENT TO WHICH THE AGENCY HAS PROVIDED APPROPRIATE PUBLIC ACCESS TO RECORDS, MEETINGS AND RULEMAKINGS, INCLUDING SOLICITING PUBLIC INPUT IN MAKING RULES AND DECISIONS.

Board members are appointed by the Commission and all meetings are announced and held in compliance with open meeting laws. The Board is balanced in representation with respect to industry, owner/operators, utility, contractors, and insurance. The constituencies represented by these members provide a mechanism to further involve the public with respect to recommendations made for proposed boiler standards and regulations.

6. THE EXTENT TO WHICH THE AGENCY TIMELY INVESTIGATED AND RESOLVED COMPLAINTS THAT ARE WITHIN ITS JURISDICTION.

Since the Board is advisory and not regulatory, this sunset factor is not applicable. See Sunset Factor Analysis for the Commission.

7. THE EXTENT TO WHICH THE LEVEL OF REGULATION EXERCISED BY THE AGENCY IS APPROPRIATE AS COMPARED TO OTHER STATES OR BEST PRACTICES, OR BOTH.

Since the Board is advisory and not regulatory, this sunset factor is not applicable. See Sunset Factor Analysis for the Commission. For informational purposes, though, in North America there are currently 79 separately recognized jurisdictions (states, provinces, counties, and cities) that govern the installation, operation and repair of boilers. 44 of these jurisdictions do not have a Boiler Board

⁵² <https://www.nationalboard.org/>

of any type, while 35 jurisdictions do. The authority of the Boiler Boards in these 35 jurisdictions vary from being advisory (as it is in Arizona) to regulatory with varying degrees of enforcement.⁵³

8. THE EXTENT TO WHICH THE AGENCY HAS ESTABLISHED SAFEGUARDS AGAINST POSSIBLE CONFLICTS OF INTEREST.

Although the Committee is advisory, and not regulatory, members are expected to disclose conflicts of interest and recuse themselves as appropriate.

9. THE EXTENT TO WHICH CHANGES ARE NECESSARY FOR THE AGENCY TO MORE EFFICIENTLY AND EFFECTIVELY FULFILL ITS KEY STATUTORY OBJECTIVES AND PURPOSES OR TO ELIMINATE STATUTORY RESPONSIBILITIES THAT ARE NO LONGER NECESSARY.

The Commission believes that the Board is able to comply with the sunset factors under the current statutory framework.

10. THE EXTENT TO WHICH THE TERMINATION OF THE AGENCY WOULD SIGNIFICANTLY AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE.

The Board allows for greater industry and public participation in the adoption of boiler standards and regulations. The Board also provides another important forum for industry and public input regarding safety and health issues related to boilers. Lastly, the Board provides expertise and industry insight, which is necessary for a strong program. The Board consists of a very technical group of individuals who have historically been successful in bringing the industry together to assist the Commission in drafting standards and regulations regarding boiler safety. Employers, employees and the general public would be adversely impacted if the Board was terminated.

⁵³ The National Board of Boiler and Pressure Vessels Inspectors, NB-370 National Board Synopsis at <http://www.nationalboard.org/ViewAllSynopses.aspx>

ADDITIONAL QUESTIONS

1. **THE EXTENT TO WHICH THE AGENCY POTENTIALLY CREATES UNEXPECTED NEGATIVE CONSEQUENCES THAT MIGHT REQUIRE ADDITIONAL REVIEW BY THE COMMITTEE OF REFERENCE, INCLUDING INCREASING THE PRICE OF GOODS, AFFECTING THE AVAILABILITY OF SERVICES, LIMITING THE ABILITIES OF INDIVIDUALS AND BUSINESSES TO OPERATE EFFICIENTLY AND INCREASING THE COST OF GOVERNMENT.**

The Commission is unaware of any negative consequences created by the Board.

2. **THE EXTENT TO WHICH THE AGENCY HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES.**

The Commission has not sought statutory changes in the enabling statutes of the Board.

3. **THE EXTENT TO WHICH THE AGENCY HAS DETERMINED WHETHER THE ATTORNEY GENERAL OR ANY OTHER AGENCY IN ARIZONA HAS THE AUTHORITY TO PROSECUTE OR INITIATE ACTIONS.**

Since the Board is advisory and not regulatory, this sunset factor is not applicable. See Sunset Factor Analysis for Commission.

4. **THE CONSEQUENCES OF ELIMINATING THE AGENCY OR CONSOLIDATING IT WITH ANOTHER AGENCY.**

The Board provides expertise and industry insight, which is necessary for a strong program. The board's members are experts who assist the Commission in drafting standards and regulations regarding boiler safety. Employers, employees and the general public would adversely be impacted if the Board was terminated. Because the Board is advisory and not regulatory in nature, consolidating the Board with another agency or Board would require a clear statement of duties and responsibilities to ensure that the Board continues to fulfill its statutory mandate.

ADDITIONAL OCCUPATIONAL REGULATION QUESTIONS

Under A.R.S. § 23-485 ADOSH issues certificates as special boiler inspectors to an inspector of any company that has received a certificate of accreditation from either the national board of boiler and pressure vessel inspectors or the American society of mechanical engineers as an authorized inspection agency or an owner-user inspection organization, upon the request of the company. Pursuant to A.R.S. § 23-23-474, the Industrial Commission of Arizona shall (1) administer this article (Title 23, Article 11) through the division of occupational safety and health (ADOSH) (2) adopt standards and regulations pursuant to section 23-475 and adopt other rules as are necessary, and (3) exercise other powers as are necessary to carry out the duties and requirements of this article.

1. THE EXTENT TO WHICH THE OCCUPATIONAL REGULATION MEETS THE REQUIREMENTS OF A.R.S. § 41-3502.

The regulation of boiler inspectors meets the requirements of A.R.S. § 41-3502 because there is credible evidence of harm that if boilers were unregulated there would be a threat to the public health, safety or welfare in this state. The actual or anticipated public benefit of the regulation clearly exceeds the costs imposed on consumers, businesses and individuals. The public needs and can reasonably be expected to benefit from safe boilers. The current regulations are the least restrictive regulations, which still provide safety for the public.

2. THE EXTENT TO WHICH THE FAILURE TO REGULATE A PROFESSION OR OCCUPATION WILL RESULT IN:

a. THE LOSS OF INSURANCE

Insurers would be less likely to insure buildings if the boilers within the buildings were not considered safe.

b. AN IMPACT TO THE ABILITY TO PRACTICE IN OTHER STATES OR AS REQUIRED BY FEDERAL LAW

There is no impact to the ability to practice in other states through our regulation of boiler inspectors.

c. AN IMPACT TO THE REQUIRED LICENSURE OR REGISTRATION WITH THE FEDERAL GOVERNMENT

There is no impact, because boiler inspectors are not regulated by the Federal government.

d. THE LOSS OF CONSTITUTIONALLY AFFORDED PRACTICES

There are no constitutionally afforded practices that are affected by regulating boiler inspectors.

SUNSET FACTOR ANALYSIS OF THE OSHA REVIEW BOARD

The Occupational Safety and Health Administration (OSHA) Review Board (Review Board) provides a vital function in protecting worker safety. Employers who believe that the Arizona Division of Occupational Safety and Health (ADOSH) has made errors in its findings, or imposed too large of a fine for violations, after an administrative hearing at the Office of Administrative Hearings (“OAH”), pursuant to A.R.S. § 23-420 may appeal to the Review Board for relief, pursuant to A.R.S. § 23-423.

By statute, A.R.S. §23-422, the Review Board consists of five members, appointed by the governor and who by reason of training, education, or experience are qualified to carry out the powers and duties of the board. The current members are Gary Lasham, Seth Turken, Richard Murphy, Stephen Healey, and Mitch Henderson.

Board members serve voluntarily and receive a per diem of \$30. per A.R.S. § 23-422(E).

1. THE KEY STATUTORY OBJECTIVES AND PURPOSES IN ESTABLISHING THE AGENCY.

The Review Board's objective is to provide a forum to fairly and impartially hear appeals regarding orders and citations of the Arizona Division of Occupational Safety and Health (ADOSH) , after an administrative hearing at the Office of Administrative Hearings (“OAH”). A.R.S. § 23-422. The purpose in establishing the Review Board was to mirror federal occupational safety and health disciplinary order appeals and have a final appeal step in the administrative law process rather than proceeding directly to Court.

2. THE AGENCY’S EFFECTIVENESS AND EFFICIENCY IN FULFILLING ITS KEY STATUTORY OBJECTIVES AND PURPOSES.

In 2016, changes in Arizona statutory law placed the initial administrative hearing in ADOSH citation matters under the jurisdiction of OAH. See A.R.S. §§ 23-407(6) and 23-422. With these statutory changes, the ICA Administrative Law Judge (“ALJ”) Division is tasked with providing administrative support and legal counsel to the Review Board. A.R.S. § 23-422. The Review Board operates efficiently with five volunteer members and administrative support and legal counsel, as necessary, provided by the ICA ALJ Division.

3. THE EXTENT TO WHICH THE AGENCY’S KEY STATUTORY OBJECTIVES AND PURPOSES DUPLICATE THE OBJECTIVES AND PURPOSES OF OTHER GOVERNMENTAL AGENCIES OR PRIVATE ENTERPRISES.

The key statutory objectives and purposes are not duplicated by other governmental agencies or private enterprises. The Review Board is the only entity authorized to hear administrative appeals in ADOSH matters. The Review Board's purpose is to act as a check on citations issued by ADOSH, and rulings made by OAH after an administrative hearing, when employers believe that a decision or fine has been based on inaccurate facts or the fine imposed is too severe. It provides employers and ADOSH the opportunity to express their positions and receive a ruling from a board consisting of citizens who bring the community's perspective to the process, in a setting less formal than Court.

4. THE EXTENT TO WHICH RULES ADOPTED BY THE AGENCY ARE CONSISTENT WITH THE LEGISLATIVE MANDATE.

The Review Board has rights and procedures for review of decisions of the administrative law judge after hearing at OAH as set forth in A.R.S. §§ 23-242 and 243. The rules and procedures provide deadlines for the filing of a request for review, the requirement of a written transcript of the appealed proceeding for review, allowing for oral argument before the Review Board upon request, and outlining the Review Board's statutory authority to affirm, reverse, modify, or supplement the decision issued by the administrative law judge at OAH. The legislative rules and procedures set forth the process by which a party aggrieved by the decision of the Review Board may seek judicial review, pursuant to A.R.S. § 12-901 *et. seq.*, Judicial Review of Administrative Proceedings.

5. THE EXTENT TO WHICH THE AGENCY HAS PROVIDED APPROPRIATE PUBLIC ACCESS TO RECORDS, MEETINGS AND RULEMAKINGS, INCLUDING SOLICITING PUBLIC INPUT IN MAKING RULES AND DECISIONS.

The Review Board receives transcripts of the hearing at OAH at the expense of the party requesting review, and receives the certified record from OAH, including all evidentiary or other submissions made in the administrative hearing process. A.R.S. § 23-423(C). The Review Board provides notice of review by mail or email, a hearing date is established and notice sent to the parties if oral argument is requested, and the Review Board issues a written decision sent by mail or email to the parties. A.R.S. § 23-423(D), (E), (F), and (H). The hearing is open to the public. A.R.S. § 38-431.02. If a judicial review action is instituted, the Industrial Commission certifies the record, proceedings and evidence before the administrative law judge and Review Board to the Superior Court. A.R.S. § 23-423(I).

6. THE EXTENT TO WHICH THE AGENCY TIMELY INVESTIGATED AND RESOLVED COMPLAINTS THAT ARE WITHIN ITS JURISDICTION.

The Review Board does not investigate and resolve complaints. Its jurisdiction is limited to deciding appeals from OAH in ADOSH matters. It resolves those appeals promptly and efficiently.

7. THE EXTENT TO WHICH THE LEVEL OF REGULATION EXERCISED BY THE AGENCY IS APPROPRIATE AS COMPARED TO OTHER STATES OR BEST PRACTICES, OR BOTH.

The Review Board has rules and procedures related to its role as the last administrative appeal in ADOSH order and citation matters. The level of rules and procedures are limited to those required to maintain a clear, fair, impartial, and efficient review of an administrative determination. The rules provide clear deadlines for requesting review of a decision issued by an administrative law judge at OAH and provide notice and an opportunity to be heard in the administrative appeal, consistent with protecting all parties rights and requirements to exhaust administrative remedies.

8. THE EXTENT TO WHICH THE AGENCY HAS ESTABLISHED SAFEGUARDS AGAINST POSSIBLE CONFLICTS OF INTEREST.

The Review Board consists of voluntary members, not affiliated with the Industrial Commission; the ICA ALJ Division provides administrative support and legal counsel to the Review Board and has no involvement in ADOSH's investigation, the issuance of orders or citations, the approval of any recommendations by ADOSH , or the initial administrative review at OAH⁵⁴.

9. THE EXTENT TO WHICH CHANGES ARE NECESSARY FOR THE AGENCY TO MORE EFFICIENTLY AND EFFECTIVELY FULFILL ITS KEY STATUTORY OBJECTIVES AND PURPOSES OR TO ELIMINATE STATUTORY RESPONSIBILITIES THAT ARE NO LONGER NECESSARY.

No changes are necessary for the more efficient and effective fulfillment of the Review Board's statutory objectives and purposes, nor is there a need to eliminate statutory responsibilities that are no longer necessary. The Review Board has limited statutory objectives and purposes and its role is narrow and well-defined.

10. THE EXTENT TO WHICH THE TERMINATION OF THE AGENCY WOULD SIGNIFICANTLY AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE.

Termination of the Review Board would eliminate a party's legal right to appeal ADOSH decisions in a user-friendly forum. Having the Review Board as an administrative appeal step prior to filing appeals in the Court of Appeals is an efficient and effective appeal step.

Community volunteers give their time to review decisions reached by ADOSH . Without the Review Board, an employer who believes that they have been mistreated by ADOSH would have to go directly to the Court of Appeals. The Review Board is quicker, informal, and includes evaluation of the situation by the employer's peers; citizens who will listen empathetically. The business owner may proceed without a lawyer and obtain an independent evaluation of their concerns. As a result,

⁵⁴ A.R.S. 23-422(G)

the Review Board serves a valuable and positive role. Removing this appeal step may be a substantial financial detriment to litigants, and may preclude appeals by lay persons who cannot maneuver through the Superior Court Judicial Review Act.

ADDITIONAL QUESTIONS

1. **THE EXTENT TO WHICH THE AGENCY POTENTIALLY CREATES UNEXPECTED NEGATIVE CONSEQUENCES THAT MAY REQUIRE ADDITIONAL REVIEW BY THE COR, INCLUDING INCREASING THE PRICE OF GOODS, AFFECTING THE AVAILABILITY OF SERVICES, LIMITING THE ABILITIES OF INDIVIDUALS AND BUSINESSES TO OPERATE EFFICIENTLY AND INCREASING THE COST OF GOVERNMENT.**

The Review Board does not create unexpected negative consequences. As noted in response 10, above, community volunteers give their time to review decisions reached by ADOSH, after an evidentiary hearing and ruling by OAH. Without the Review Board, an employer who believes that it has been mistreated by ADOSH would have to go directly to the Court of Appeals. The Review Board is quicker, less formal, and includes evaluation of the situation by the employer's peers; citizens who will listen empathetically. The business owner may proceed without a lawyer and obtain an independent evaluation of his or her concerns. As a result, the OSHA Review Board serves a valuable and positive role.

2. **THE EXTENT TO WHICH THE AGENCY HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES.**

There are no known deficiencies in the enabling statutes related to the Review Board. As noted above, the Review Board serves a vital, but limited purpose, in providing an added level of administrative review.

3. **THE EXTENT TO WHICH THE AGENCY HAS DETERMINED WHETHER THE ATTORNEY GENERAL OR ANY OTHER AGENCY IN ARIZONA HAS THE AUTHORITY TO PROSECUTE OR INITIATE ACTIONS.**

Neither the Attorney General, nor other agencies, have prosecutorial, or initiating, authority under the Review Board statutes, or any other statute. ADOSH is a part of the ICA and is governed by statutes necessary for it to fulfill its objectives and purposes regarding investigations, orders and citations, regarding workplace safety. The ICA legal division represents ADOSH in litigation before OAH, in appeals to the Review Board, and in additional appeals, as necessary.

4. **THE CONSEQUENCES OF ELIMINATING THE AGENCY OR OF CONSOLIDATING IT WITH ANOTHER AGENCY.**

The Review Board cannot be eliminated without the risks stated in question 10, above. Consolidating the Review Board with another agency presents risk of a conflict of interest, adds additional layers of complexity to the administrative appeal process, and threatens the loss of the Review Board's quasi-judicial impartiality. The Review Board provides employers cited by

ADOSH with a review hearing which includes evaluation of the situation by the employer's peers; citizens who will listen empathetically. The business owner may proceed without a lawyer and obtain an independent evaluation of their concerns. Removing this appeal step may be a substantial financial detriment to litigants, and may preclude appeals by lay persons who cannot maneuver through the Superior Court Judicial Review Act.

ADDITIONAL OCCUPATIONAL REGULATION QUESTIONS

1. THE EXTENT TO WHICH THE OCCUPATIONAL REGULATION MEETS THE REQUIREMENTS OF A.R.S. § 41-3502.

The Review Board is not tasked with, or statutorily authorized to regulate an occupation.

2. THE EXTENT TO WHICH THE FAILURE TO REGULATE A PROFESSION OR OCCUPATION WILL RESULT IN:

- a. THE LOSS OF INSURANCE**
- b. AN IMPACT TO THE ABILITY TO PRACTICE IN OTHER STATES OR AS REQUIRED BY FEDERAL LAW**
- c. AN IMPACT TO THE REQUIRED LICENSURE OR REGISTRATION WITH THE FEDERAL GOVERNMENT**
- d. THE LOSS OF CONSTITUTIONALLY AFFORDED PRACTICES**

As noted above, the Review Board is not tasked with, or statutorily authorized to regulate an occupation.

APPENDICES

Appendix A

Workers' Compensation Assessment Rate History, 1985 - 2023

Industrial Commission of Arizona

Workers' Compensation Assessment Rate History

Calendar Year	Administrative (1)	General Special Fund (2)	Insolvencies/ Bankruptcies (3)	Apportionment (4)	Assessment Total
1985	3.00%	1.50%	0.00%	0.00%	4.50%
1986	3.00%	1.50%	0.00%	0.00%	4.50%
1987	3.00%	1.50%	0.00%	0.00%	4.50%
1988	3.00%	1.50%	0.00%	0.00%	4.50%
1989	3.00%	1.25%	0.00%	0.00%	4.25%
1990	3.00%	1.00%	0.00%	0.00%	4.00%
1991	3.00%	1.00%	0.00%	0.00%	4.00%
1992	3.00%	0.75%	0.00%	0.00%	3.75%
1993	3.00%	0.00%	0.00%	0.00%	3.00%
1994	1.25%	0.00%	0.00%	0.00%	1.25%
1995	1.45%	0.00%	0.00%	0.00%	1.45%
1996	1.25%	0.00%	0.00%	0.00%	1.25%
1997	2.15%	0.00%	0.00%	0.00%	2.15%
1998	3.00%	0.00%	0.00%	0.00%	3.00%
1999	3.00%	0.00%	0.00%	0.00%	3.00%
2000	3.00%	0.00%	0.00%	0.00%	3.00%
2001	3.00%	0.00%	0.00%	0.00%	3.00%
2002	2.75%	0.00%	0.00%	0.00%	2.75%
2003	3.00%	0.00%	0.00%	0.00%	3.00%
2004	3.00%	1.50%	0.00%	0.00%	4.50%
2005	3.00%	1.50%	0.50%	0.50%	5.50%
2006	3.00%	1.50%	0.50%	0.50%	5.50%
2007	3.00%	1.50%	0.50%	0.50%	5.50%
2008	3.00%	1.50%	0.00%	0.00%	4.50%
2009	3.00%	1.50%	0.00%	0.00%	4.50%
2010	2.65%	1.50%	0.50%	0.50%	5.15%
2011	3.00%	1.50%	0.50%	0.50%	5.50%
2012	3.00%	1.50%	0.50%	0.50%	5.50%
2013	2.75%	1.25%	0.50%	0.50%	5.00%
2014	1.75%	1.14%	0.36%	0.25%	3.50%
2015	1.50%	0.58%	0.00%	0.17%	2.25%
2016	1.50%	0.00%	0.00%	0.00%	1.50%
2017	2.25%	0.00%	0.00%	0.00%	2.25%
2018	1.75%	0.00%	0.00%	0.00%	1.75%
2019	1.75%	0.00%	0.00%	0.00%	1.75%
2020	1.75%	0.00%	0.00%	0.00%	1.75%
2021	1.75%	0.00%	0.00%	0.00%	1.75%
2022	1.75%	0.00%	0.00%	0.00%	1.75%
2023	2.00%	0.00%	0.00%	0.00%	2.00%

(1) Administrative Fund Assessment, A.R.S. § 23-961 (G) and A.R.S. § 23-1081 (A)

(2) General Special Fund Assessment, A.R.S. § 23-1065 (A)

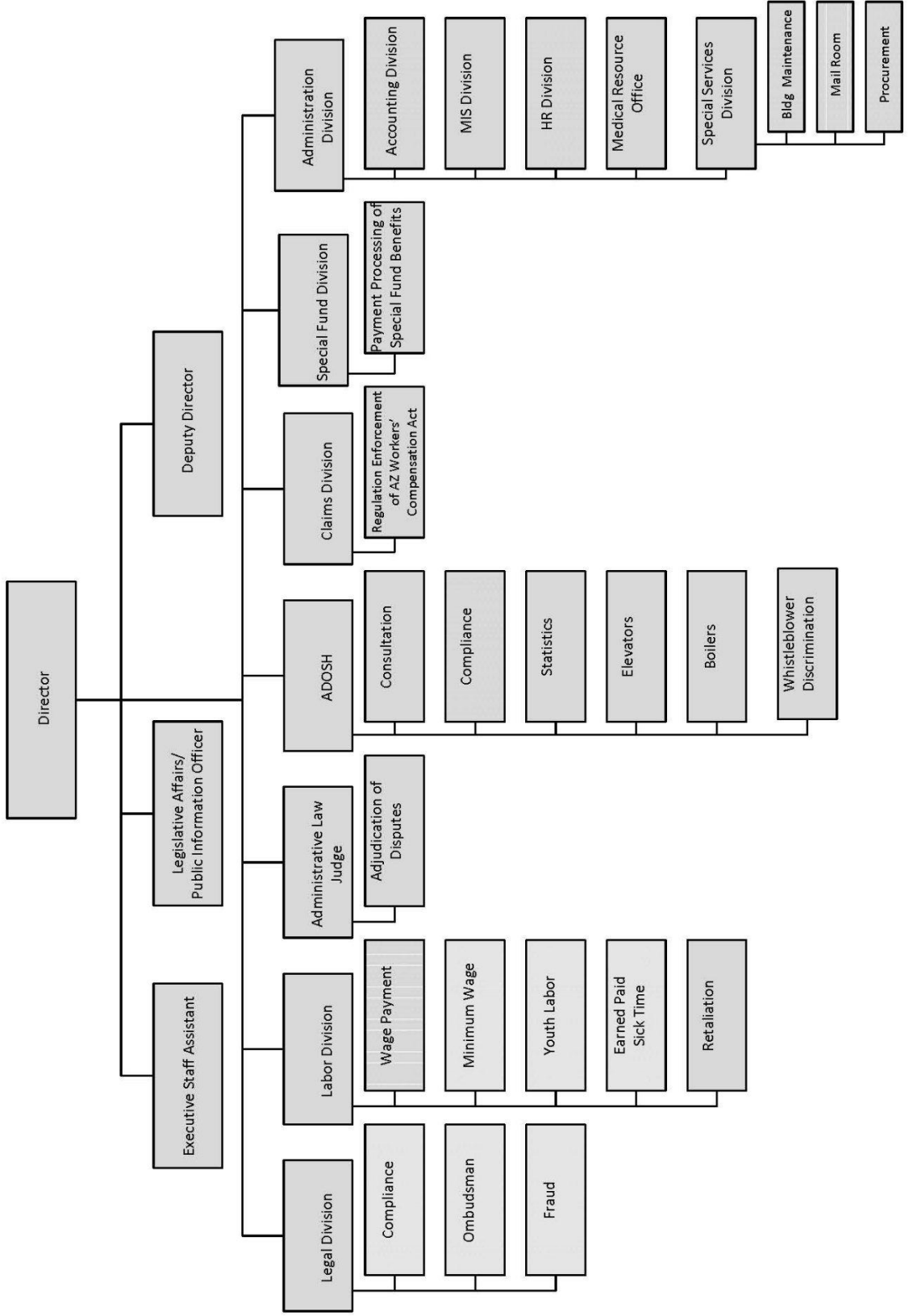
(3) Assessment for Insolvencies/Bankruptcies, A.R.S. § 23-966 (D); assessment eliminated effective July 1, 2015.

(4) Assessment for Apportionment, A.R.S. § 23-1065 (F)

Appendix B

Industrial Commission of Arizona Agency Organization and Staffing Levels

The Industrial Commission of Arizona Agency Organization



Agency Staffing As of June 30, 2023

Claims Division

36 filled, 5 vacancies

Special Fund Division

12 filled, 1 vacancy

**Arizona Division of Occupational Safety
and Health**

67 filled, including 36.4 Federally funded FTEs,
13 vacancies

Administrative Law Judge Division

36 filled, 1 vacancy

Medical Resource Office

2 filled, 0 vacancies

Labor Department

17 filled, 3 vacancies

Legal Division

16 filled, 0 vacancies

Accounting Division

13 filled, 0 vacancies

Human Resources

3 filled, 0 vacancies

Management Information Systems

6 filled, 0 vacancies

Special Services Division

10 filled, 0 vacancies

Appendix C

Industrial Commission of Arizona Claims Manual, Table of Contents

2023

Workers' Compensation Claims Seminar



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Appendix D

Online Workers' Compensation Coverage Verification Service



Employer	FEIN	Address
<p>State *</p> <p>Arizona </p> <hr/> <p>Coverage Date *</p> <p>07/25/2023 </p> <hr/> <p>Employer Name *</p> <hr/> <p><input checked="" type="radio"/> Contains <input type="radio"/> Starts With</p> <p> SEARCH <input type="button" value="CLEAR"/></p>		

Limitation of Information

Information contained in/provided from this database is a representative reflection of selected information maintained by the Industrial Commission of Arizona and is used for specific workers compensation coverage verification. There may be discrepancies in information provided due to causes outside the control of the Industrial Commission of Arizona such as reporting/recording delays or inaccuracies. Information on self-insured employers are not included in this database. Any questions for the Industrial Commission of Arizona may be directed to (602) 542-6713 or WWW.ICA.STATE.AZ.US.

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Appendix E

Summary of Workers' Compensation Statutory Changes, 1970 to Present

Summary of work comp changes 1970-2023

1970

23-901 (Effective 08-11-70)

Members of the volunteer sheriff's reserve were brought under the Law with a fixed wage of \$400.

23-1067 (Effective 08-11-70)

Maximum lump sum commutation changed from \$6,500 to \$25,000

1971

23-1241 ODC (Effective 08-13-71)

Temporary total compensation: no limitation. (Previously limited to 2/3 of the average monthly wage = \$40 a week and a maximum of \$7,500.)

Temporary partial compensation was provided without limitation.

Death benefits were increased. (Was previously a maximum of \$25 a week to the surviving spouse and

\$5 for each dependent to a maximum of \$15, for a maximum total of \$40 a week, not to exceed \$7,500. All temporary total compensation advances were to be deducted.)

Total permanent compensation: no provisions for "partial" loss of earning capacity.

ODC and Injury Claims (Effective 08-13-71)

Funeral expenses increased from \$300 to \$800 for a deceased worker and dependents.

1972

23-901 (Effective 08-13-72)

Volunteer policemen, firemen, and the Highway Patrol were removed from the fixed wage of \$400 to a regular rate.

23-1041 (Effective 08-13-72)

Reduced the age of majority from 21 to 18.

23-1042 (Effective 08-13-72)

Changed the age in this section from 21 to 18, for determining the average monthly wage for permanent disability benefits of a minor worker.

1973

23-908(C) (Effective 08-08-73)

Hospital records are no longer privileged information.

23-1044 (Effective 08-08-73)

Partial temporary compensation payment increased from 65% to 66 2/3% of the average monthly wage.

Eliminated the 60 month maximum.

23-1045 (Effective 08-08-73)

Temporary total compensation payment increased from 65% to 66 2/3% of the average monthly wage.

Eliminated the 100 month maximum.

23-1046 (Effective 08-08-73)

Death benefits changed to include coverage of either surviving spouse.

23-1065 (Effective 08-08-73)

Required the carrier to pay supportive medical consistent with changes in 23-1044, 1045 and 1046.

Chapter 7 (Effective 08-08-73)

The ODC Law was repealed.

23-901 (Effective 01-01-74)

Working members of a partnership brought under the Law.

Arizona National Guard members were brought under the Law with a fixed wage of \$400.

23-902 (Effective 01-01-74)

Coverage was required if there were one or more employees (previously exempt if there were less than three employees.)

Agricultural workers were brought under the Law.

1974

23-947.A (Effective 05-17-74)

To include a 10 day protest clause on “all other awards” of the Commission. (Previously ICA used a discretionary 5 day clause.)

23-1046 (Effective 05-17-74)

Increased burial expenses from \$800 to \$1,000 for the deceased worker only.

23-1046.A7 (Effective 05-17-74)

Deleted.

23-1062.C (Effective 05-17-74)

Compensation shall be made by a negotiable instrument payable immediately upon demand.

23-901.F (Effective 08-08-74)

Rehabilitation: Persons placed by DES for evaluation or retraining are considered to be employees of DES.

23-901.G (Effective 08-08-74)

Fixed wage of \$400 was removed to the regular wage for the volunteer sheriff’s reserve.

23-901.J & K (Effective 08-08-74)

Volunteer certified ambulance drivers and attendants and volunteer workers of health care institutions both now covered under worker’s compensation, with a fixed wage of \$400.

1975

23-952 (Effective 09-12-75)

Payment of permanent compensation set forth in Order or Award of ICA shall continue pending hearing or appeal.

1976

No significant changes in 1976: only grammatical corrections.

1977

23-906 (Effective 08-27-77)

Employers are no longer required to file a notice of an employee rejecting the provisions of the Workers’ Compensation Law with the Commission, but rather, file the notice with the insurance carrier or self-insured employer within five (5) days of receipt from a rejecting employee.

23-907 (Effective 08-27-77)

On no-insurance claims, allows the Commission to speed up payment of compensation benefits to claimants by paying directly from the Special Fund when the claim is accepted as compensable and then seeking reimbursement from the non-insured employer. The employer is then assessed an automatic 10% penalty.

23-1041 (Effective 08-27-77)

Average monthly wage maximum raised from \$1,000 to \$1,250.

23-1047 (Effective 08-27-77)

Deleted requirement that a claimant receiving permanent compensation benefits make an annual report of income to the Industrial Commission. The report is to be made to the insurance carrier or self-insured employer instead.

1978

23-906 (Effective 10-01-78)

Corrects instructions for filing Rejections from tripli- cate to duplicate.

23-908(F) (Effective 10-01-78)

Employers must file an Employer's Report of Injury with the Commission and the insurance carrier instead of the carrier only. Non-compliance changed from a misdemeanor to a petty offense.

23-941(K) (Effective 10-01-78)

Added. Allows ICA to dispose of exhibits for hearing purposes.

23-961 (Effective 10-01-78)

Requires carriers to give ICA a 30-day notice of non-renewed policies.

23-1066 (Effective 10-01-78)

Permits ICA to appoint a Guardian Ad Litem for an injured worker determined to be incompetent.

23-1068 (Effective 09-03-78)

Allows employer credit for benefits paid to injured workers if the claim is questionable, and later found compensable.

1979

No changes

1980

23-901 (Effective 07-31-80)

Paragraphs 2, 7, 10 and 15 were **added** to define Co-employee; Heart-related or Perivascular injury or disease; Mental injury, Illness or Condition and the remaining paragraphs were appropriately renumbered.

23-906 (Effective 07-31-80)

Liability under chapter or under common law of employer securing compensation; carriers; service representatives; right of employee to make election; procedure for making election.

Amended to exclude Insurance Carriers or Administrative Service Representatives from liability for damages at common law.

23-941 (Effective 07-31-80)

Ten day prior notice of the time and place of hearing is no longer applicable for hearings pertaining to 23-1047, Subsection D, concerning annual report of income.

23-947 (Effective 07-31-80)

A. **Amends** the sixty day filing time of Requests for Hearing to ninety days.

B. **Added:** Requires that the Request for Hearing be in the possession of the Industrial Commission within 90 days with limited exceptions.

23-1022 (Effective 07-31-80)

A. **Re-establishes** co-employee immunity, subject to constitutional amendment by a vote of the people.

Removes the following two exceptions to exclusive remedy:

- a. Motion Picture exemption (covered by 23-909)
- b. Employer's posting of compliance notice (Section 23-964)

C. **Added:** Immunity excluded for medical malpractice suits against employees of a hospital maintained by employers pursuant to 23-1070.

23-1024 (Effective 07-31-80)

A. **Extends** immunity to Co-Employee, Insurance Carrier or Administrative Service Representative.

23-1041 (Effective 07-31-80)

E. Maximum average monthly wage increased from \$1,250 to \$1,325.

23-1043 (Effective 07-31-80)

2. Rebuttable presumption that hernias are not real traumatic hernias and all will be treated as non-traumatic unless proven otherwise.

23-1043.01 (Effective 07-31-80)

A. Heart-related or perivascular injuries are compensable when employment-related injury, stress or exertion was a substantial contributing cause.

B. Mental stress cases are compensable when employment-related and unexpected, unusual or extraordinary stress was a substantial contributing cause.

C. The employer liable for heart-related and mental cases is the last for whom the injured worker was

employed while meeting requirements specified by Subsections A or B.

23-1044 (Effective 07-31-80)

G. In its determination of earning capacity, the Commission may consider the following:

A. Employee evidence that the inability to obtain suitable work is due in part or in whole to the injury or its limitations.

B. Employer evidence concerning economic conditions or other factors unrelated to injury.

H. Rescinds holding of *Langbell v. Industrial Commission decision*. (Odd Lot Doctrine).

All single scheduled injuries, as defined in Subsection B, which are not otherwise, by statute, converted to unscheduled, shall be compensated as scheduled injuries regardless of effect on earning capacity.

23-1061 (Effective 01-01-81)

A. **Limits** time for filing compensation claim to one year jurisdictional period with minor exceptions; i.e., misrepresentation on the part of the Industrial Commission, employer or insurance carrier; insanity or legal incompetence of the party entitled to file claim.

B. **Provides** for extension of filing time for a claim where the carrier or employer has paid compensation; such extension is not applicable where the carrier or employer has paid funeral expenses in death claims or benefits pursuant to 1065-A.

23-1065 (Effective 07-31-80)

B. 1 and 2 Successive scheduled injury where pre-existing scheduled injury is industrially related shall be processed as unscheduled with the Industrial Commission's Special Fund responsible for one-half of any compensation awarded in excess of 50% loss in earning capacity.

C. 1 and 2 Successive scheduled injury where pre-existing scheduled injury is not industrially

related, shall be processed as unscheduled if that pre-existing condition was affecting earning capacity at the time of the subsequent industrially related scheduled injury. The Industrial Commission's Special Fund shall assume one-half of all compensation awarded for earning capacity in excess of 50%.

D. Provides for expenditures from the Industrial Commission's Special Fund for such purposes as may be necessary to determine its liability.

E. Requires the Insurance Carrier or Employer to pay the entire amounts awarded pursuant to either Subsection B or C and for the Special Fund to make annual reimbursements of their proportionate liability.

The title of Hearing Officer has been changed to Administrative Law Judge in all sections where they are referenced in the Workers' Compensation Law.

1981

23-910(5) (Effective 07-25-81)

L. **Added:** Personnel who participate in a search or rescue operation that carries a mission identifier assigned by the Division of Emergency Services as provided in Section 35-192.01 and who serve without compensation as volunteer State employees. The basis for computation of wages for premium purposes and compensation benefits is the total volunteer man-hours recorded by the Division of Emergency Services in a given quarter multiplied by the average base hourly wage of a starting sheriff's deputy.

23-981(E) (Effective 07-25-81)

State compensation fund; purpose; administration; function; purchase of real property and construction of buildings.

The operating and capital outlay budget of the State Compensation fund shall be subject to review and approval by the joint legislative budget committee.

23-1023(B) (Effective 04-27-81)

Liability of third person to injured employee; election of remedies. A worker's compensation claim assigned to an insurance carrier because the covered employee did not pursue his remedy within the one year time limit can be reassigned to the employee and treated as if the claim had been filed within the first year.

23-1065(A) (Effective 07-25-81)

Payment where no dependent survives; special fund; purpose. The Industrial Commission's Special Fund consists of property and securities and interest acquired by use of fund money in addition to premiums, assessments and penalties paid into the fund. A five member investment committee (three members appointed by the Governor) replaces the Commission Director as the investing authority. The percentage of premiums that the Commission can order diverted to the Special fund is decreased to 1.5% from 2%.

Organizational change of agency not affecting the Workers' Compensation Law.(Effective midnight, 12-31-81)

Provides for a transfer of the office of Fire Marshall from the Industrial Commission to the Department of Emergency Services.

1982

23-901(5) (Effective 07-24-82)

L. **Added:** Regular member of the Arizona Game and Fish Department reserve, organized pursuant to Section 17-214. The basis for computing wages for premium payments and compensation benefits for a member of the reserve is the salary received by game rangers and wildlife managers of the Arizona Game and Fish Department for their first month of regular duty.

23-901(6) (Effective 04-09-82)

Volunteer workers In addition to persons defined as employees under Section 23-901, paragraph 5, volunteer workers of a county, city, town, or other

political subdivision of the state may be deemed to be employees and entitled to the benefits provided by this chapter upon the passage of a resolution or ordinance by the political subdivision defining the nature and type of volunteer work and workers to be entitled to such benefits.

The basis for computing compensation benefits and premium payments shall be four hundred dollars (\$400) per month.

1983

23-906; 907; 962(A); 962(B) (Effective 04-12-83)

Permits the State of Arizona to self-insure for workers' compensation.

23-910 (Effective 07-27-83)

Added. Excludes real estate licensees paid primarily on a Commission or contractual basis from the definition of "employee" for workers' compensation purposes.

23-961(G); 961(H) (Effective 02-11-83)

Requires quarterly payments of some workers' compensation premium tax.

23-981(A) - (D); 981.01(H); 985(D) - (G); 986; 987; 23-1006(B) (Effective 01-01-84)

Expands the State Compensation Fund's operation to conform with private carriers of workers' compensation insurance.

23-1022(D) (Effective 07-27-83)

Employees of public agencies who have intergovernmental agreements with other such agencies are considered employees of both (absent the appropriate filing of rejection), with the primary employer having sole liability for workers' compensation benefits.

1984

The designation of Title 23, Chapter 6, Article 1, is changed to "Scope of Workers' Compensation" with confirming changes in the various sections.

1985

23-901 (Effective 08-07-85)

Permits sole proprietors to be considered employees for purposes of coverage under the workers' compensation law. Providing coverage to sole proprietors is subject to the discretion of the carrier.

The basis for computing premium payment and compensation benefits for working members of partnerships will be based in most cases on an assumed monthly wage agreed to by the insurance carrier and the partnership.

Workers' compensation coverage is extended to volunteers who participate in search and rescue training operations or emergency management training, exercises or drills.

23-905(B) (Effective 08-07-85)

An injured minor who is illegally employed is entitled to additional compensation benefits in an amount equal to 50% of the compensation the minor would have otherwise received.

23-907(C) (Effective 08-07-85)

Provides for an alternative penalty of \$500 against uninsured employers if such figure is higher than the 10% statutory penalty in cases of compensable claims. Interest accrues on Special Fund judgments in the same manner as is otherwise provided for judgments in general. The ICA is authorized to recover attorney fees which are incurred in collecting on a judgment.

23-907(E) (Effective 08-07-85)

Permits the exchange of information among governmental agencies concerning uninsured employers.

23-907(F) (Effective 08-07-85)

Permits the ICA to levy a \$500 civil penalty against an uninsured employer in cases where although an employee's compensation claim is denied, an

employment relationship requiring insurance coverage is found.

23-926(A) (Effective 08-07-85)

Clarifies ICA access to non-confidential records of employers on file with other governmental agencies.

23-926(B) (Effective 08-07-85)

The penalty for refusal to comply with ICA inspections is increased to \$500 and the ICA is authorized to recover attorney fees incurred in any civil actions brought pursuant to this section.

23-932 (Effective 08-07-85)

The criminal penalty for failure to comply with workers' compensation laws is increased from a class 2 misdemeanor to a class 6 felony.

23-961(H) (Effective 08-07-85)

Prescribes a procedure for refunds of overpayment of quarterly taxes collected from private insurance carriers.

23-961(I) (Effective 08-07-85)

Provides a penalty for late payment of Administrative Fund, State Compensation Fund and self-insurer taxes similar to penalties imposed for other premium taxes collected by the Department of Insurance.

23-967 (Effective 08-07-85)

The criminal penalty for illegal deduction of employee wages for compensation premiums was increased from a petty offense to a class 6 felony.

23-1025 (Effective 08-07-85)

The criminal penalty for intentionally collecting or receiving premiums from an employee for workers' compensation insurance is made a class 6 felony.

23-1065(A) (Effective 08-07-85)

The \$1,150 death benefit payment to the Special Fund is omitted.

1986

23-1065(H) (Effective 04-11-86)

Rent prescribed by the special fund investment committee must be at least equal to or greater than that determined for other state buildings by the joint committee on capital review.

23-418.01 (Effective 08-13-86)

Provides that determination of certain occupational safety and health violations may be consolidated with and considered in the injured employee's worker's compensation hearing.

23-907(G) (Effective 08-13-86)

Provides that the Commission can levy a civil penalty of up to \$500 on employers who fail to secure worker's compensation insurance. The penalty can be imposed regardless of whether a claim is filed. Hearing procedures are also prescribed.

23-1065 (Effective 08-13-86; applies retroactively to 01-01-86) (Subsections A, B, C, D and E are amended; Subsection F is added; remaining subsections relettered to conform.)

The second-injury apportionment provisions are completely revised. The existing 5 situations in which apportionment is possible are replaced by the following:

1. Apportionment will apply if there is a pre-existing industrially related scheduled injury followed by another industrially related scheduled injury and there is a loss in earning capacity. The carrier/ self-insured employer will pay the fully awarded LEC until the scheduled permanent benefits are paid and thereafter, payments are shared equally with the Commission Special fund. If there is no LEC, the carrier/self-insured employer pays the scheduled permanent compensation in a lump sum as a "rehabilitation bonus" to be credited against future LEC.
2. Apportionment will apply if there is a pre-existing physical impairment, not industrially related, either congenital or due to enumerated injury/dis- ease, with 10% or more

disability. The employer must have knowledge of pre-existing disability at time of hire or employment continued after the employer had such knowledge. The carrier/self-insured employer pays all temporary compensation and then the payments for LEC or permanent to- tal disability are shared equally with the Commis- sion Special Fund.

Notification and reimbursement procedures are also prescribed. Procedures to increase the special fund premium tax are prescribed. Approval of the Special fund is required in third party settlements made in apportionment cases.

1987

23-901.07 (Effective 08-18-87)

Provides that a client of a non-profit organization which provides vocational training to handicapped persons is an employee for worker's compensation purposes if the non-profit organization so elects.

23-947(A) (Effective 08-18-87)

Provides that Requests for hearing by uninsured employers must be made within 30 days of a determination by the Commission.

23-961(E) (Effective 08-18-87)

Provides that a carrier must promptly notify the Industrial Commission of new coverage.

23-962(A) (Effective 08-18-87)

Removes the requirement for a mandatory contract between state risk management and the State Compensation Fund for processing of state employee workers' compensation claims.

23-110 (Effective 07-01-88)

Adds new section to require Commission to establish an ombudsman position to provide information about the workers' compensation system and Commission Rules and Procedures.

23-906 (Effective 10-21-87)

Amended to require employer posting of workers' compensation rejection notices in English and Spanish.

23-930 (Effective 01-01-88)

Adds new section mandating exclusive ICA jurisdiction over complaints of unfair claim process and practices or bad faith actions by carriers or self-insured employers.

23-947 (Effective 10-21-87)

Amended to clarify late filing excuses by defining the term "justifiable reliance".

23-1026 (Effective 10-21-87)

Amends definition of "reasonable convenient place" with regard to independent medical examinations and requires claimants to submit to periodic IME's. Provides for Protective Order if examination is unnecessary.

23-1041 (Effective 10-21-87)

Amended to increase limit on Average Monthly Wage in three steps as follows:

1. For injuries occurring before 01-01-88, AMW re- mains \$1,325.
2. For injuries occurring between 01-01-88 and 06- 30-89, AMW is increased to \$1,650.
3. For injuries occurring between 07-01-89 and 06- 30-91, AMW is increased to \$1,800.
4. For injuries occurring after 06-30-91, AMW is in- creased to \$2,100.

23-1044 (Effective 10-21-87)

Amended to legislatively overturn the Dutra decision. Subsection B, Paragraph 21 defines "loss of use"

If an employee cannot return to former occupation, compensation will be calculated at 75% of AMW.

23-1048 (Effective 10-21-87)

Adds section to establish Wage Advisory Commission, members to be appointed 01-01-91.

23-1067 (Effective 10-21-87)

Amended to provide that ceiling on lump sum commutation requests on unscheduled awards be increased to \$50,000 for requests made after 06-30-87.

23-1071 (Effective 10-21-87)

Amended to provide that if the Administrative Law Judge approves a request to leave the state after request is initially denied by the Claims Division, employee is entitled to forfeited benefits from date of first requested Commission approval.

Temporary Session Law (Effective 10-21-87)

Provides a cost of living increase for workers who are on total permanent disability status or who are receiving benefits as a surviving spouse of an injured worker for claims made between 01-01-20 and 12-31-49.

1988

11-952.01

Provides that worker compensation pools formed by contractors doing business with the state are subject to ICA self-insurance requirements.

23-908

Provides that the ICA medical fee schedule shall also set fees charged by physical therapists in workers' compensation cases.

23-961

Removes carrier capital assets which conflicted with state insurance code.

Changes the security deposit requirement for workers' compensation carriers.

Provides that carrier bonds are subject to annual ICA approval.

23-1065

Statutory references are confirmed to changes made to A.R.S. §23-961.

41-621.01

Provides that worker compensation pools formed by political subdivisions are subject to ICA self-insurance requirements.

1989

23-1046 (Effective 09-15-89)

Increased burial expense reimbursement from \$1,000 to \$3,000.

Two non-substantive technical corrections were also made.

1990

23-907 (Effective 09-27-90)

Adds Subsection I. Provides a mechanism for compromise and settlements and/or stipulations with uninsured employers whereby they are given notice and the opportunity to participate; duty of uninsured employer to keep ICA informed of current mailing address; reimbursement to ICA from uninsured employer.

23-930 (Effective 09-27-90)

Amends Subsection B. Imposes a minimum \$500 penalty for unfair claim processing or bad faith for cases in which the 25% of benefits penalty does not reach the \$500 level.

23-1043.02 (Effective 09-27-90)

Adds a new section to the Workers' Compensation Law. States that a claim can be made for a condition, infection, disease or disability involving or related to the human immunodeficiency virus or acquired immune deficiency syndrome but shall include the occurrence of a "significant exposure" which is defined in the statute.

Provides that certain classes of workers enumerated in the statute who satisfy certain conditions as outlined in the statute present a prima facie claim which may be rebutted.

Contains confidentiality provision. Mandates the Commission by rule to prescribe the requirements and forms regarding employee notification of the requirements of the statute and the proper documentation of a significant exposure.

23-1045 (Effective 09-27-90)

Amends Subsection A, paragraphs 1 and 2 effective for dates of injury from and after 12-31-90.

Deletes the word "totally" preceding "dependent", thereby allowing a dependent allowance to be added to the average monthly wage in a situation where the injured worker is not the sole source of support. This permits a spouse to work without the family jeopardizing its dependent allowance. Increases the dependent allowance from \$10 per month to \$25 per month per family.

23-1046 (Effective 09-27-90)

Amends Subsection A, paragraph 3. Extends dependent death benefits from age 18 to age 22 if the child is enrolled as a full-time student in any accredited educational institution for dates of injury on or after 09-27-90.

23-1061 (Effective 09-27-90)

Amends Subsection H. Allows for the payment of surgical benefits incurred not more than seven days prior to filing a Petition to Reopen if a bona fide emergency precluded a prior filing; no compensation is payable, however, for this period.

23-1064 (Effective 09-27-90)

Amends Subsection A, paragraph 3. Extends the definition of "dependent" to include a child up to the age of 22 if enrolled as a full-time student in any accredited educational institution for dates of injury on or after 09-27-90.

1991

No changes

1992

23-901 (Effective 09-30-92)

Amends paragraph 5(e) by deleting the word “Regular” preceding “Members”; by substituting “department of public safety” for “Arizona highway patrol”; by substituting “41-1715” for “41-1744”; addresses the basis of computing wages for DPS reserves who are peace officers and those who are not peace officers.

Non-substantive changes to paragraphs 5(a), 5(b)(ii), 5(c), 5(m), 5(n), 6, 11, 14.

23-987 (Effective 06-30-92, retroactively effective to 01-01-90)

Amends by requiring the State Compensation fund to determine the amount of its federal tax based on all sources of “income” rather than “on all premiums collected or contracted for” and then to transmit this amount to the state treasurer for deposit into the state general fund; provides for a minimum payment of five hundred thousand dollars.

1993

23-961 (Effective 06-15-93)

Amends Subsection G by setting a floating tax rate of not more than 3% as opposed to the previous fixed rate of 3%; the floating tax rate to be set annually by the Industrial Commission; the rate to be no more than is necessary to cover the actual expenses of the Commission in carrying out its powers and duties under Title 23.

23-963.01 (Effective 07-17-93)

Adds new section to Title 23 which authorizes workers’ compensation insurers to offer deductible coverage policies to employers; benefits to be paid first by the carrier with reimbursement from the employer to the carrier for the deductible amounts; non-payment of deductible by employer does not relieve the carrier from payment of benefits; prohibits termination of policy by the carrier retroactively for non-payment of deductible amounts by the employer.

23-987 (Effective retroactively to 04-14-92)

Repeals provision requiring the State Compensation Fund to transmit to the state general fund annually the greater of five hundred thousand dollars or the amount equivalent to its federal tax based on all sources of the SCF’s “income”.

23-1081 (Effective 06-15-93)

Amends Subsection A by giving the Industrial Commission the authority to annually fix the rate of the premium tax referenced in A.R.S. §23-961.G., such rate not to exceed 3%; the amount generated by the premium tax rate is to be no more than is necessary to fund Commission expenses; amounts generated to be paid to the State Treasurer for credit to the Administrative Fund.

Amends Subsection B by removing the provision which mandated that any surplus in the Administrative Fund was to be transferred at the end of each fiscal year to the Special Fund; provides that any surplus or deficit in the Administrative Fund at the end of each fiscal year is now to be included in the calculation of the rate to be fixed for the following year.

1994

23-901 (Effective 01-01-96)

Amends Subsection (5)(d) by correcting the statutory reference to the organization of regular firemen of volunteer fire department or private fire service organizations.

23-902 (Effective 07-17-94)

Non-substantive changes made to Subsection A.

Amends Subsection B by defining the phrase “part or process in the trade or business of the employer” to mean a particular work activity that in the context of an ongoing and integral business process is regular, ordinary or routine in the operation of the business or is routinely done through the business’ own employees.

Adds Subsection D to provide that the employer of a sole proprietor who has waived his rights to

workers' compensation benefits pursuant to A.R.S. §23-961 is not liable for workers' compensation coverage or the payment of premiums for the sole proprietor.

23-961 (Effective 07-17-94)

Adds Subsection K to provide that neither the State Compensation Fund nor an insurance carrier authorized to write workers' compensation insurance may assess any premiums for services provided by a contractor alleged to be a 23-902(B) or (C) employee unless a written audit or investigation establishes that employment status has been met pursuant to criteria set forth in 23-902 and the employer has been given a copy of the findings in advance of being assessed a premium.

Adds Subsection L to permit a sole proprietor who is licensed with the Registrar of Contractors to waive his rights to workers' compensation coverage and benefits, provided the sole proprietor and insurance carrier for the employer sign the appropriate form. This waiver provision does not apply to employees of the sole proprietor for whom workers' compensation must be maintained.

23-984 (Effective 07-17-94)

Amends and **Adds** Subsection A to provide that it is unlawful for an employer to willfully misrepresent to an insurance carrier the job description or job function of an employee or the employer class listing.

Adds Subsection B to provide that an employer who violates Subsection (A) is guilty of a class 6 felony.

Amends Subsection C to allow the imposition of both a civil penalty and a criminal penalty for a violation of this section.

23-1028 (Effective 07-17-94)

Amends Subsection A to provide that an employee who makes false statements or representations to obtain compensation is guilty of a class 6 felony.

Adds Subsection B to provide that the fine for violation of this section shall not exceed fifty thousand dollars.

1995

No changes.

1996

23-902 (Effective 07-20-96)

Amends Subsection A for non-substantive, grammatical changes.

Amends Subsection C to substitute the word "business" for "employer" in order to conform to the language in the new Subsection D.

Adds new Subsection D to permit the use of a written agreement between a business and an independent contractor which, if executed pursuant to the terms of this subsection, creates a rebuttable presumption of an independent contractor relationship. Unless the rebuttable presumption is overcome, no premium may be collected by the carrier on payments by the business to the independent contractor.

Renumbers old Subsection D to E and changes the phrase "an employer" to "a business that uses the services."

Adds new Subsection F to provide that the agreement described in Subsection D is null and void, and creates no presumption of an independent contractor relationship if the consent of either party is obtained through misrepresentation, false statements, fraud, intimidation, coercion or duress. The carrier may also collect a premium where the agreement is found to be null and void.

23-907 (Effective 07-20-96)

Amends Subsection C to provide that civil penalties and interest collected from uninsured employers on No Insurance claims be deposited in the state's General Fund instead of the Special Fund;

reimbursement for medical benefits and disability payments remain deposited in the Special Fund.

Amends Subsection H to provide that civil penalties collected by the Commission against uninsured employers pursuant to A.R.S. §23-907(F) and 23-907(G) are payable to the state's General Fund instead of to the Special Fund.

23-926 (Effective 07-20-96)

Amends Subsection B to provide that penalties collected for failure of an employer to submit the employer's books, records and payroll for ICA inspection upon request shall be paid to the state's General Fund instead of the Special Fund.

23-930 (Effective 07-20-96)

Amends Subsection C to provide that penalties against an employer, self-insured employer, insurance carrier or claims processing representative for a history or pattern of repeated bad faith or unfair claims processing be transmitted to the state Treasurer for deposit into the state's General Fund instead of to the Special Fund.

23-961 (Effective 07-20-96)

Amends Subsection G for non-substantive and grammatical changes.

Amends Subsection L to expand the application of the voluntary waiver of workers' compensation coverage provision to all sole proprietors, not just those licensed by the Registrar of Contractors.

23-1021 (Effective 07-20-96)

Adds new Subsection C to provide for a non-compensable worker's compensation claim when the impairment of an employee is due to an employee's use of alcohol or the unlawful use of any controlled substance prescribed by Title 13, Chapter 34, and is a substantial contributing cause of an employee's injury or death. The subsection does not apply if an employer had actual knowledge of and permitted, or condoned, an employee's use of alcohol or the unlawful use of a controlled substance.

23-1065 (Effective 07-20-96)

Amends Subsection I to exclude from deposit in the Special Fund any penalties assessed pursuant to Title 23, Chapter 6.

1997

23-961 (Effective 07-21-97)

Amends Subsection (A)(2) to expand the "self-insurance" option to employers that are part of a workers' compensation pool created pursuant to §23-961.01.

23-961.01 (Effective 07-21-97)

Adds new section to permit two or more employers, engaged in similar industries, to enter into contracts to establish workers' compensation pools subject to criteria of statute and Commission rules and subject to the approval of the Commission. Exempts these pools from taxation under Title 43. [See §43-1201(16)]

Mandates the Commission to promulgate rules necessary to carry out the purposes of this section. The rules are to include, at a minimum, the enumerated items in the statute.

No pool, employer within a pool, or agent of any pool or employer within a pool may require an employee to be treated or directed to any specific medical provider subsequent to the initial visit to treat an industrial injury or illness, except as to an independent medical exam.

23-963 (Effective 07-21-97)

Amends paragraph 4 to include that the bankruptcy of an employer or his discharge thereon shall not relieve the workers' compensation pool for payment of compensation for claims attributed to that employer during the employer's period of membership in the pool.

23-1028 (Effective 4-29-97)

Adds new Subsections C and D which subject violations of §23-1028 to the additional penalties prescribed by the new §20-466.02 and 20-466.04 in

Title 20 which are under the jurisdiction of the Arizona Department of Insurance (“ADOI”).

Section 20-466.02 **enables** ADOI, through the Attorney General, to petition the superior court for injunctive relief, affirmative relief and/or additional civil penalties. Additionally, the provision also permits the awarding of general costs, investigative costs and reasonable attorney fees.

Section 20-466.04 **permits** the Director of ADOI to forward to the appropriate professional licensing agency the name of any person who is convicted of, enjoined from or penalized for violation(s) of §23-1028.

Section 23-1028 **defines** “statement” (for purposes of §23-1028) as “any notice, proof of injury, bill for services, payment for services, hospital or doctor records, x-rays, test reports, medical or legal expenses, or other evidence of loss or injury, or other expense or payment.”

23-1031 (Effective 12-01-97)

Renumbered from §23-1028.01. Adds new section to provide for the suspension of workers’ compensation benefits to a person (convicted of a crime or adjudicated delinquent) while incarcerated in any state, federal, county or city jail or correctional facility.

An **exception** applies to garnishment for child support obligations.

46-349 (Effective 07-21-97)

As part of new Article 9 (Arizona Works Program) to Title 46, Chapter 2, Arizona Revised Statutes, Subsection H of this section states that participants in Level Three or Level Four of the Arizona Works Program will not be considered employees for purposes of Title 23, Chapters 4 (Employment Security) and 6 (Workers’ Compensation).

Level Three placement is described in Subsection (B)(3) as “... in a trial job that is an unsubsidized, unpaid position ...” Level Four placement is described in Subsection (B)(4) as “a community

referral ... designed to improve the employability of persons by providing work experience and training to assist them to move promptly to unsubsidized employment...”

46-352 (Effective 07-21-97)

Employers (public and private) choosing to participate in the subsidized employment program of the Arizona Works Program shall provide workers compensation coverage pursuant to Subsection H of this section for each participant so employed.

1998

23-1021.01 (Effective retroactively from and after 1-3-97 and operative immediately)

Adds a new section to include that a peace officer or a firefighter as defined in §1-215 who is injured or killed while traveling directly to or from work shall be considered to be in the course and scope of employment solely for the purposes of workers’ compensation, provided that the peace officer or firefighter is not engaged in criminal activity.

Limits civil damages liability of the peace officer or firefighter’s employer.

46-349 (Effective 08-21-98)

Amends Subsection H of this section of the Arizona Works Program by inserting an exception clause which provides that even though Level Three (unsubsidized, unpaid) and Level Four (community referral, grant money) participants are not considered employees for purposes of the Workers’ Compensation Act, the Arizona Works Agency shall provide, pursuant to §46-352.H., workers’ compensation benefits from temporary assistance for needy families’ monies.

46-352 (Effective 08-21-98)

Amends Subsection H of this section of the Arizona Works Program to mandate that employers shall provide workers’ compensation coverage for participants in Level One (full-time, unsubsidized employment) and Level Two (subsidized, paid employment) as determined in §46-349; mandates

the Arizona Works Agency provide workers' compensation to participants in Levels Three and Four as determined in §46-349.

1999

23-108.02 (Effective 08-06-99)

Amends Subsection A relating to administrative law judges to change state personnel "commission" to "board;" other non-substantive stylistic changes.

23-901 (Effective 08-06-99)

Amends paragraph 5(d) of the "Definitions" section by substituting the words, "Chapters 24 through 40" for "chapter 22" of title 10 relating to private fire protection service organizations.

23-908 (Effective 08-06-99)

Amends Subsection A by inserting the words, "the report;" deleting the words, "and regulations;"

Amends Subsection B by adding occupational therapists to the list of healthcare providers subject to the Commission's schedule of fees when attending injured employees;

Amends Subsection C by deleting the words, "the provisions of."

23-953 (Effective 08-06-99)

Adds new section that provides benefits to continue on a protested scheduled award issued pursuant to §23-1044(B) pending finality; any overpayment shall be credited against any future compensation liability on the same claim.

23-961.01 (Effective 08-06-99)

Deletes Subsection C of this "self-insurance pools" section that references §10-2305(B);

Reletters succeeding subsections to conform;

Amends the old Subsection G (now "F") to change the word "groups" to "pools;" other non-substantive changes.

23-1021 (Effective 08-06-99)

Amends Subsections A through C by making non-substantive changes;

Adds new Subsections D through H addressing circumstances under which an employee's injury or death may or may not be compensable where alcohol or illegal drugs are suspected to be a contributing cause of the employee's injury or death; provides for annual filing with the Commission by an employer that has in place a policy of drug testing or alcohol impairment testing; defines "substantial contributing cause" as "anything more than a slight contributing cause."

23-1025 (Effective 08-06-99)

Amends Subsections A and B for only non-substantive changes relating to agreements to waive compensation and relating to the unlawful collection of premiums.

23-1041 (Effective 08-07-99)

Amends this section by reorganizing and re-lettering some subsections; raises the statutory maximum average monthly wage to \$2,400. per month.

23-1043.03 (Effective 08-06-99)

Adds new section relating to workers' compensation claims for Hepatitis C; mirrors, in large part, the language of §23-1043.02 relating to human immunodeficiency virus or acquired immune deficiency syndrome; mandates the Commission to prescribe, by rule, requirements and forms regarding employee notification of the requirements of this section and the proper documentation of a significant exposure.

23-1044 (Effective 08-06-99)

Amends Subsection A to add that during the period of temporary partial disability, 50% of retirement and pension benefits received from the insured or self-insured employer shall be considered wages able to be earned;

Amends Subsection B(21) by adding the consideration of "total" loss of use to the present partial loss of use in calculating the benefits under a

scheduled award based on 75% of average monthly wage when the employee is unable to return to the work the employee was performing at the time of injury; other non-substantive changes;

Amends Subsections C and F for non-substantive changes;

Amends Subsection G by eliminating references to subsections C, E and F and adding a reference to §23-1061(J) disability compensation cases, thereby treating all cases under §23-1044 (except for Subsection B cases) and §23-1061(J) disability compensation cases in the same manner when determining whether an injured employee has suffered a loss in earning capacity because of an inability to obtain or retain suitable work; other changes are non-substantive.

Amends Subsection H for non-substantive changes only.

23-1045 (Effective 08-06-99)

Amends Subsection A, paragraphs 1 and 2, by removing the references to dependents residing or not residing in the United States; changes the word “chapter” to “section.”

23-1046 [applies retroactively to from and after 02-28-99 (this means deaths - a surviving spouse with no children to receive 66-2/3% of the deceased’s average monthly wage occurring on or after 03-01-99)

Amends (A)(1) to increase burial expenses from \$3,000 to \$5,000; (A)(2) as follows:

- a surviving spouse with children to receive 35% of the deceased’s average monthly wage until death or remarriage with two years compensation in one sum upon remarriage with the surviving children to receive 31-2/3% share and share alike under various circumstances; full benefits of 66-2/3% average monthly wage to revert back to surviving spouse when all surviving children are no longer eligible for benefits; once surviving spouse dies or remarries, benefits to surviving children are to be paid

pursuant to the new paragraph 3 (replacing old paragraph 4);

Deletes paragraph (A)(3) and renumbers subsequent paragraphs in Subsection A to conform;

Amends old paragraph (A)(4) [new paragraph (A)(3)] to add “or remarriage” as a circumstance in calculating benefits to surviving children; allows benefits to continue to age 22 for surviving children if enrolled in any accredited educational institution;

Amends Subsection A for non-substantive changes.

Deletes Subsection C which referenced death benefits to aliens not residing in the United States;

Reletters old Subsection D to “C.”

23-1048 (repealed from and after 12-31-99)

Repeals the Workers’ Compensation Wage Advisory Commission established pursuant to §23-1048 from and after 12-31-99.

23-1061 (Effective 08-06-99)

Amends Subsections A and B for non-substantive changes;

Amends Subsection H to provide that a claim shall not be reopened because of increased subjective pain if the pain is not accompanied by a change in objective physical findings nor shall it be reopened solely for additional diagnostic or investigative medical tests; provides that expenses for any reasonable and necessary diagnostic or investigative tests that are causally related to the injury shall be paid by the employer or insurance carrier if the claim is reopened as provided by law and if these expenses are incurred within 15 days after [sic] the date the petition to re-open is filed. [The Commission has been informed that the word “after” in the legislation as noted above is in error and should have read “of.”]; other non-substantive changes;

Amends subsection K for non-substantive change;

Amends Subsection M for non-substantive changes.

23-1065 (Effective 08-06-99)

Amends Subsection C(2) to delete the written records requirements by which an employer can establish knowledge of a pre-existing enumerated permanent impairment.

12-741 et seq.[emergency (operative immediately); approved and filed 04-26-99]

Adds new article 14 to Title 12, Chapter 6, Arizona Revised Statutes, relating to “Liability for Year 2000 Failures;” Section 12-742 relating to “Applicability” notes in Subsection B(1) that this article does not apply to actions to collect workers’ compensation benefits under Title 23; Subsection C of §12-742 provides that if a conflict exists between this article and Chapter 6, Article 9 (Product Liability) of Title 12, this article controls.

32-1451 (Effective 08-06-99)

Adds new Subsection R to this section relating to grounds for disciplinary action for doctors of medicine; provides that a physician who submits an independent medical examination pursuant to an order by a court or by the Industrial Commission is not subject to a complaint for unprofessional conduct unless a complaint is made or referred by a court or the Industrial Commission to the Arizona Board of Medical Examiners; defines the term “independent medical examination” to mean a professional analysis of medical status on a person’s past and present physical and psychiatric history conducted by a licensee or group of licensees on a contract basis for a court or for the Industrial Commission.

41-1005 (Effective 08-06-99)

Amends Subsection A by adding a new paragraph 27 which states that the Administrative Procedures Act regarding rulemaking does not apply to the schedule of fees prescribed by §23-908.

2000

11-952.01 (Effective 07-18-00)

Adds new Subsection E stating that Section 10-11301 does not apply to nonprofit corporations formed under §11-952.01 (public agency pools).

Amends Subsection G by reducing the required number of trustees of public agency pools, including workers’ compensation, from five persons to three persons.

Amends Subsection (H)(11) by removing the requirement that a public agency pool, including workers’ compensation, requires the written permission of the state treasurer to enter into financial agreements with a bank and to issue checks in its own name.

Contains some non-substantive changes.

23-901 (Effective 07-18-00)

Amends paragraph 5(f) of the “Definitions” section by adding to the definition of “employee” for purposes of workers’ compensation coverage, persons in Level Three (unsubsidized, unpaid) or Level Four (community referral) of the Arizona Works Program as well as persons in the Department of Economic Security’s temporary assistance for Needy Families Program.

Other changes to Section 23-901 are non-substantive.

23-907 (Effective 07-18-00)

Amends Subsection C by removing the reference to the “state treasurer” for transmission of No Insurance civil penalties and interest and substituting cross-references to Sections 35-146 and 35-147 in the “Public Finances” title of A.R.S.

23-930 (Effective 07-18-00)

Amends Subsection C by removing the reference to the “state treasurer” for transmission of No Insurance civil penalties and substituting cross-references to Sections 35-146 and 35-147 in the “Public Finances” title of A.R.S.

23-1091 (Effective 07-18-00)

Establishes only one workers' compensation assigned risk plan in this state.

Provides for an Assigned Risk Plan Administrator.

Provides for a charge to all insurers of a shared "reasonable fee" to administer the plan.

Provides for oversight authority of the plan by the Director of the Department of Insurance.

Enumerates criteria for the plan's operations.

Addresses the rates used to determine the premiums of risks in the assigned risk plan.

Also contains non-substantive changes to Section 23-1091.

41-621.01 (Effective 07-18-00)

Subsection A dealing with workers' compensation pools of two or more contractors licensed to do work for this state has been amended to include subcontractors as well. Additionally, the work can also be done for any political subdivision of this state, as well as for the state.

2001

23-901.01 (Effective 08-09-01)

Adds Subsections B, C, D and E to the occupational disease statute; establishes a presumption (if certain criteria are met) that a disease, infirmity or impairment caused by certain cancers or leukemia resulting in disability or death to a firefighter is an occupational disease as defined in §23-901(12)(c) and is deemed to arise out of employment;

Amends Subsection (A)(4) to change "workmen" to "workers."

23-902 (Effective 08-09-01)

Amends Subsections A, B, C, E and G for non-substantive grammatical and/or stylistic changes.

23-947 (Effective 08-09-01)

Amends Subsection A for non-substantive grammatical and/or stylistic changes;

Amends Subsection C by deleting the provision which had not excused a late filing of a request for hearing if the sender could show by clear and convincing evidence that the notice was either sent or delivered to the last known mailing address or residence as shown on Industrial Commission records; other non-substantive grammatical and/or stylistic change.

23-961 (Effective 08-09-01)

Adds new Subsection B that states an employer's obligation to secure workers' compensation for its employees may only be done through the mechanisms authorized under the Workers' Compensation Act; any other mechanisms may not be marketed, offered or sold as workers' compensation;

Re-letters succeeding subsections to conform;

Amends old Subsection F (new subsection G) by deleting the provision which had required the employer, prior to any cancellation or nonrenewal of workers' compensation, to notify the Industrial Commission;

Amends remaining subsections for non-substantive grammatical and/or stylistic changes.

23-1047 (Effective 08-09-01)

Amends Subsection C by substituting "ninety" days for "sixty" days as the time in which a request for hearing may be filed to a determination made under Subsection B (permanent disability).

Amends remaining subsections for non-substantive and/or stylistic changes.

23-1061 (Effective 08-09-01)

Amends Subsection H relating to reopened claims by substituting the word "of" for the word "after" to provide that reasonable and necessary medical, hospital, and lab work expenses incurred within 15

days of the filing of the petition to reopen shall be paid by the employer or the employer's insurance carrier;

Amends other subsections for non-substantive grammatical and/or stylistic changes.

23-1065 (Effective 08-09-01)

Amends Subsection A by conforming references in this subsection to the newly re-lettered subsections of §23-961.

23-1081 (Effective 08-09-01)

Amends this subsection by conforming references in this subsection to the newly re-lettered subsections of §23-961.

32-1451 (Effective 08-09-01)

Amends Subsection Q by removing references to the "Industrial Commission"; this subsection relates to disciplinary grounds for physicians licensed by the Arizona Board of Medical Examiners in the context of independent medical examinations.

2002

23-901 (Effective 08-22-02)

Amends Subsection 5(f) by deleting the reference to "level three or four of the Arizona works program." This was part of a bill dealing with changes to the welfare laws.

23-963.01 (Effective 08-22-02)

Amends by adding language to Subsection (A) that a benefits deductible endorsement attached to a policy shall specify whether loss adjustment expenses are to be treated as advancements within the deductible to be reimbursed by the employer.

23-986 (Effective 08-22-02)

Amends Subsection (E) by adding language that exempts the State Compensation Fund from Title 41, Chapter 39 (Access to State Agency Website Records and Privacy).

2003

23-901 (Effective 09-18-03, with a delayed effective date of 01-01-04 for amendment of 23-901 by Laws 2002, chapter 331, section 1)

Adds a new subsection two to define the word "client."

Adds to the definition of "employee" as found in subsection six (formerly subsection five), a new subsection (p) that includes every person employed pursuant to a professional employer agreement.

Adds a new subsection 14 that defines "professional employer agreement" to mean a written contract between a client and a professional employer organization that meets the criteria set forth in the new subsection.

Adds a new subsection 15 that defines "professional employer organization" to mean any person engaged in the business of providing professional employer services.

Adds a new subsection 16 that defines "professional employer services" to mean the services of entering into co-employment relationships with covered employees.

Renumbers succeeding definitions to conform.

23-901.01 (Effective 09-18-03)

Amends subsections A and B to conform to the newly renumbered subsections of §23-901.

Amends subsections B, C, D and E to include peace officers within the presumption granted under this section for a disease, infirmity or impairment caused by certain cancers or leukemia.

Amends subsection (B)(3) to add the word "and" between the first and second requirements of that subsection.

Adds a new subsection (E)(2) to define "peace officer" to mean a full-time peace officer who was regularly assigned to hazardous duty as part of a special operations, special weapons and tactics, an

explosive ordnance disposal or a hazardous materials response unit.

23-901.04 (Effective 09-18-03)

Amends subsection A to conform to the newly re-numbered subsections of §23-901.

23-901.05 (Effective 09-18-03)

Amends this Section to conform to the newly renumbered subsections of §23-901.

23-901.06 (Effective 09-18-03)

Amends this Section to conform to the newly renumbered subsections of §23-901.

23-901.08 (Effective 09-18-03)

Adds a new Section titled “Professional Employer Organization” (“PEO”).

New subsection A provides that a person providing professional employer services is subject to the Workers’ Compensation Act regardless of the term or name to which that person refers to the service.

New subsection B provides that a PEO shall be regarded as a co-employer of an employee as long as a professional employer agreement with a client remains in force.

New subsection C provides that both a PEO and its client shall be considered an employer under the Workers’ Compensation Act for purposes of coverage and the protections of the exclusive remedy of

§23-1022. Both are required to comply with §§ 23-906 and 23-964. Compliance with §23-1021(F) can be satisfied if either the PEO or client files the written certification with the Commission.

New subsection D requires a PEO to notify its workers’ compensation insurance carrier and the Commission when the PEO enters into a professional employer agreement with a client in Arizona. The notification shall be on a form approved by the Commission that includes information set forth in subsections one, two and three, of new subsection D.

New subsection E provides that if a professional employer agreement is terminated, the PEO shall immediately provide written notice to its workers’ compensation insurance carrier and the Commission of the name of the client and date the agreement was terminated.

23-902 (Effective 09-18-03)

Amends subsection A to include as an employer a person who employs covered employees under a professional employer agreement.

Amends subsection B for non-substantive grammatical changes.

23-907 (Effective 09-18-03)

Amends subsections throughout this Section for non-substantive grammatical and/or stylistic changes.

Amends subsection B to add that, except for a protest to compensability, an employer designated as an “uninsured employer” under this Section, shall provide proof of compliance with 23-961 with any subsequent protest to a determination or action of the Special Fund.

Adds a new subsection C to permit the Special Fund to begin the payment of medical or compensation benefits pending finality of a claim, condition, or other matter accepted by the Special Fund. A protest, petition for hearing, request for review, or appeal shall not interrupt payments made under this Section. Any overpayment shall be credited or adjusted against future liability on the same claim, except if the claim is finally determined to be noncompensable, in which case the overpayment shall be borne by the Special Fund.

Adds a new subsection D to authorize the Special Fund to spend monies that relate to a claim processed under this Section and to include such expenditures under the employer’s liability to the Special Fund.

Amends new subsection E (old subsection C) to increase the civil penalty from \$500 to \$1,000.

Amends new subsection H (old subsection F) to increase the civil penalty from \$500 to \$1,000.

Amends new subsection I (old subsection G) to increase the civil penalty from \$500 to \$1,000 and to require an employer that protests an order of civil penalty to specify the facts and grounds of the objection. A decision following a hearing on a protest to a civil penalty order is now required to be served by “first class” mail on the employer, rather than “regular” mail.

Adds a new subsection J to provide for increased civil penalties for repeat failures to obtain workers’ compensation insurance. For a second violation within the previous 5 years, the Commission may assess a penalty not to exceed \$5,000. For a third or subsequent violation within the previous 5 years, the Commission may assess a penalty not to exceed \$10,000.

Adds a new subsection K that sets forth the factors the Commission may consider in assessing a civil penalty under subsections H, I or J. The factors include the employer’s history of non-compliance to obtain workers’ compensation coverage or history of no insurance claims filed with the Commission, whether the employer’s failure to obtain coverage was inadvertent, or whether the failure to obtain coverage was because the employer was a victim of fraud, misrepresentation or gross negligence by an insurance agent or broker or a person believed to be an insurance agent or broker.

Reletters subsections throughout to conform Section.

23-961 (Effective 09-18-03)

Amends subsection B for non-substantive grammatical changes.

Amends subsection F to permit cancellation of a workers’ compensation insurance policy if one or both of the parties to a professional employer agreement terminate the agreement.

Amends subsection M to conform to the newly renumbered subsections of §23-901.

23-1021 (Effective 09-18-03)

Amends subsection F to eliminate the requirement to file with the Commission on or before January 15 of each year written certification of an employer’s policy of drug testing or alcohol impairment testing (initial filing of written certification retained).

Amends subsection H for non-substantive grammatical changes.

23-1065 (Effective 09-18-03)

Adds a new subsection H to authorize the special fund to spend monies that relate to the processing, payment, or determination of liability of the Special Fund under the Workers’ Compensation Act.

Reletters subsections throughout to conform Section.

Amends subsections throughout this Section for non-substantive grammatical and/or stylistic changes.

2004

23-107 (Effective 08-25-04)

Adds new subsections (A)(7), (A)(8), and (A)(9) to authorize and establish criteria for the exchange of non-public information between the Commission and other state, local or federal regulatory agencies for the purpose of the legitimate administrative needs of the Commission and exchanging agencies.

Adds a new subsection (D) to provide confidentiality to financial information received from a private entity that applies to self-insure or that renews its self-insurance authority if the information is kept confidential by the private entity in its ordinary and regular course of business.

23-902 (Effective 08-25-04)

Amends subsection (E) to conform to the newly re-lettered subsections of §23-961.

23-908 (Effective 08-25-04)

Amends subsection (B) to add to the list of fees set by the Commission, prescription medicines required to treat an injured employee.

Adds a new subsection (C) to require that if a schedule of fees for prescription medicine is adopted under subsection (B) and includes provisions regarding the use of generic equivalent drugs, that those provisions comply with §32-1963.01 subsections (A) and (C) through (K). Additionally, if the Commission considers the adoption of a fee schedule that involves specific prices, values, or reimbursement for prescription drugs, then the Commission shall base the adoption on studies or practices that are validated and accepted in the industry, including the applicability of formulas that use average wholesale price, plus a dispensing fee, and that have been made publicly available for at least 180 days before any hearing conducted by the Commission.

Amends Section throughout for grammatical/stylistic changes.

Reletters subsections throughout to conform to Section.

23-961 (Effective 08-25-04)

Amends subsection (C) to substitute the words “insurance carriers that transact” for “corporations or associations transacting.” Deletes all other language in the subsection except the language providing that insurance carriers are subject to the rules of the director of insurance.

Amends subsection (D) for non-substantive grammatical/stylistic changes.

Amends subsections (D)(2), (D)(2)(a), and (D)(2)(b), to add that the Department of Insurance may request that the computations set forth in those subsections use information from a period other than the preceding December 31.

Amends subsections (D)(2)(a) and (D)(2)(b)(ii) to substitute the word “the” for “all” immediately preceding the phrase “determined and estimated future direct reported loss...”

Adds a new subsection (E) that requires an insurance carrier to file with the Department of Insurance, on or before April 15 and any other time specifically requested by the Department, information necessary to compute the required deposit.

Adds a new subsection (F) that requires a carrier to maintain at all times a deposit of cash or securities, through the Director of Insurance, in an amount not less than what is required under this Section.

Amends old subsection (E)(now subsection G) to eliminate the use of a bond in lieu of cash or securities. Adds language providing that the Director of Insurance shall hold the cash or securities posted by an insurance carrier acting as a reinsurer for fulfillment of the obligations of the carrier. Adds language that the Commission shall have a lien against the cash or securities deposited to the extent the Special Fund is liable to pay the obligations secured by the cash or securities. Amends throughout for non-substantive grammatical/stylistic changes.

Reletters subsections throughout to conform to Section.

23-966 (Effective 08-25-04)

Amends subsection (A) to add that the Commission may assign the claims of an “other employer authorized by the Commission to process or pay claims directly under this Chapter.” Adds language providing that the claims assigned to the State Compensation Fund under this Section shall be processed and paid “on behalf of and under the direction of the Special Fund established by Section 23-1065.” Eliminates the right of the State Compensation Fund to assert a claim and collect against the deposit posted under §23-966 for amounts paid on assigned claims. Adds language that the Special Fund shall periodically, but not less

than quarterly, reimburse the State Compensation Fund for amounts paid under this Section. Amends throughout for non-substantive grammatical/ stylistic changes.

Amends old subsection (B) to delete reimbursement of State Compensation Fund's net loss incurred. Reletters the remaining language as subsection (D).

Adds a new subsection (B) to authorize the Special Fund to pay, in addition to any reimbursement authorized under subsection (A), any expense or service that is necessary to assist in the determination of liability of a claim assigned under the Section or collection against the deposit posted under §23-966.

Adds a new subsection (C) to provide that the Special Fund shall have a claim against the insurance carrier or employer for all monies that are spent or anticipated to be spent under this Section, which claim shall be made upon the cash, securities or bond posted under §23-961 or other assets of the insurance carrier or employer.

Amends subsection (D) to substitute the word "Special" for "State Compensation."
23-1021 (Effective 08-25-04)

Amends subsection (G) to conform to relettering of 23-908.

23-1043.02 (Effective 08-25-04)

Amends subsection (E) to conform to relettering of 23-908.

23-1043.03 (Effective 08-25-04)

Amends subsection (E) to conform to relettering of 23-908.

23-1061 (Effective 08-25-04)

Amends subsection (A) to conform to relettering of 23-908.

23-1065 (Effective 08-25-04)

Amends subsection (A) to conform to relettering of 23-961.

Amends subsection (H) for non-substantive grammatical/stylistic changes.

23-1081 (Effective 08-25-04)

Amends subsections (A) and (B) to conform to relettering of 23-961.

2005

23-1081 (Effective 08-12-05)

Amends subsections (B) to permit surplus in the administrative fund to be transferred to the special fund when the special fund is not actuarially sound.

2006

No changes in 2006.

2007

23-901 (Effective 09-19-07)

Adds a new subsection (6)(q) to include within the definition of "employee" members of the Department of Administration Capitol Police Reserve organized under A.R.S. §41-794 and to provide the basis for computing wages under the Act for these individuals.

23-902 (Effective 09-19-07)

Amends subsection (A) for non-substantive grammatical changes.

Amends subsection (E) to conform to the newly re-lettered subsections of §23-961.

23-961 (Effective 09-19-07)

Adds a new subsection K that permits an insurance carrier to reduce the premium paid by an employer up to 5% if certain drug testing conditions apply.

Reletters subsections throughout to conform to Section.

Amends throughout for non-substantive grammatical changes.

23-1023 (Effective 09-19-07)

Amends subsection (B) to address the third party claim rights of an insurance carrier or self-insured employer if an employee or the employee's dependents do not pursue a third party claim or if, after instituting a third party claim, the employee or employee's dependents fail to fully prosecute the third party claim and the claim is dismissed.

Adds a new subsection (C) to impose notice requirements concerning the third party claim upon an employee or the employee's dependents and to give the insurance carrier or self-insured employer the right to intervene in the third party action to protect their interests.

Adds a new subsection (E) to give the Commission the same rights as an insurance carrier or self-insured employer under this Section.

Amends throughout for non-substantive grammatical changes.

Reletters subsections throughout to conform to Section.

23-1041 (Effective 09-17-07)

Amends subsection (D)(4) to state the actual effective dates of that subsection (statutory cap of \$2,100 applies to employees injured from and after June 30, 1991, but before August 6, 1999).

Amends subsection (D)(5) to state the actual effective dates of that subsection (statutory cap to \$2,400 applies to employees injured on or after August 6, 1999, but before January 1, 2008).

Adds a new subsection (D)(6) increasing the statutory cap to \$3,000 for employees injured from and after December 31, 2007, but before January 1, 2009.

Adds a new subsection (D)(7) increasing the statutory cap to \$3,600 for employees injured from and after December 31, 2008, but before January 1, 2010.

Adds a new subsection (D)(8) establishing the statutory cap at an amount adopted by the Commission under a new subsection (E).

Adds a new subsection (E) requiring the Commission, not later than August 1 of each calendar year beginning August 1, 2009, to adopt an amount that adjusts the statutory cap from the prior year to reflect the annual percentage increase in the Arizona Mean Wage published by the Department of Economic Security using the Bureau of Labor Statistics Occupational Employment Statistics coded for all occupations for the prior calendar year. The amount adopted by the Commission shall be effective for the following calendar year and shall apply to all injuries occurring during that calendar year. In adopting the amount under this subsection, the Commission shall not decrease the amount from the prior year or increase the amount more than 5% from the prior year.

23-1043.04 (Effective 09-19-07)

Adds a new Section titled "Methicillin-resistant staphylococcus aureus; spinal meningitis; tuberculosis; establishing exposure; definitions" that addresses claims for a condition, infection, disease or disability involving methicillin-resistant staphylococcus aureus, spinal meningitis, or tuberculosis. This new Section includes the requirement for a significant exposure, criteria for establishing a prima facie claim, reporting requirements, confidentiality provisions, and payment for post-exposure evaluation, follow-up, and prophylactic treatment. For purposes of this new Section, employees that may establish a prima facie claim are limited to firefighters, law enforcement officers, corrections officers, probation officers, emergency medical technicians and paramedics who are not employed by a healthcare institution as defined in §36-401.

23-1046 (Effective 09-19-07)

Amends subsection (A)(3) to adjust the percentage of benefits available to a single surviving child from 25% to 66 2/3% of the average monthly wage of the deceased and to provide that multiple surviving children divide equally the 66 2/3%.

23-1062.01 (Effective 09-19-07)

Adds a new Section titled “Timely payment of medical, surgical and hospital benefits billing; content of bills; contracts between providers and carriers; exceptions; definitions” This new Section includes:

- Time-frames for processing and payment of medical bills by an insurance carrier, self-insured employer or claim processing representative;
- Payment of interest, at the legal rate, to medical providers for untimely paid bills;
- Criteria for billing denials;
- Information required to be included in a billing;
- A provision that an insurance carrier, self-insured employer or claims processing representative is not responsible to pay a medical bill unless the billing is received within 24 months from the date on which the service was rendered or from the date on which the health care provider knew or should have known that service was rendered on an industrial claim, whichever is later;
- A provision that an injured worker is not responsible for payment of any portion of a medical bill for services rendered on an accepted claim and is not responsible for payment of any disputed amount between a healthcare provider and insurance carrier, self-insured employer or claims processing representative;
- A provision that an insurance carrier, self-insured employer, or claims processing representative may establish an internal system for resolving payment disputes and other contractual grievances with health care providers;
- A provision that this Section does not apply to a health care provider that enters into an express written contract with an insurance carrier, self-insured employer or claims processing representative that specifies the period in which approved bills shall be paid and contractual remedies for untimely bill

payment. This provision further provides that the Commission does not have jurisdiction over disputes involving timely payment of billings under a contract between a health care provider and an insurance carrier, self-insured employer or claims processing representative; and

- Definitions applicable to this new Section.

23-1065 (Effective 09-19-07)

Amends subsection (A) to conform to the newly re-lettered subsections of §23-961.

23-1067 (Effective 09-19-07)

Amends subsection (B) to increase the maximum amount of a lump sum commutation to \$150,000 (from \$50,000) for requests made from and after June 30, 2007.

2008

23-901 (Effective 09-26-08)

Amends subsection (2) for non-substantive grammatical changes.

Amends subsection (10) to add “the employee’s estate” to the definition of “interested party.”

23-1061 (Effective 09-26-08)

Amends subsection (H) to prohibit the filing of a petition to reopen a previously denied claim if the denial was allowed to become final and no exception applies under A.R.S § 23-947 excusing a late filing to request a hearing. An intent section states that this amendment is only intended to overrule the court decision in Gerhardt v. Industrial Commission, 181 Ariz. 215, 889 P.2d 8 (1994) and is not intended to overrule any other court decision.

Amends subsection (J) to require that a claim for temporary partial disability benefits be filed with the Commission within two years after the date the claimed entitlement to compensation accrued or within two years after the date on which an award for benefits encompassing the entitlement period

becomes final. The amendment includes a definition of “accrue” for purposes of this subsection.

2009

23-357 (Effective 09-30-09)

Amends subsection (B) to change the effective date for licensed rating organization rate filings to January from October 1.

23-359 (Effective 09-30-09)

Amends subsection (B) to change the expiration date for deviations from filed rates to December 31 from September 30.

23-371 (Effective 09-30-09)

Amends subsection (F) to change the effective date for statewide workers’ compensation rates to January from October 1.

Amends subsection (G) to change the reference to the effective date for statewide workers’ compensation rates to January 1 from October 1.

Amends subsections (A) and (B) for non-substantive grammatical changes.

23-901.08 (Effective 09-30-09)

Amends subsection (C) to delete a reference to 23-1021(F) as that subsection has been repealed.

Amends subsection (C) for a non-substantive grammatical change.

23-984 (Effective 09-30-09)

Amends subsection (C) to:

- Decrease the penalty for an employer that willfully misrepresents the amount of payroll, the job description or job function of an employee, or the employer’s loss history to an insurance carrier, to “up to three” times the difference in premium paid and the amount the employer would have paid. The statute had provided for a penalty amount of 10 times the difference;

- Clarify that the penalty is in addition to any other damages the carrier may incur including costs and attorneys’ fees;
- Establish a four-year statute of limitations for the carrier to initiate a civil action to recover the penalty and other damages;
- Explain that the carrier may initiate the civil action regardless of whether a criminal action is brought against the employer.

Amends throughout for non-substantive grammatical changes.

23-1021 (Effective 09-30-09)

Repeals subsections (C) through (H), to eliminate the provisions that stated a work-related injury death was not compensable if the employee was impaired due to alcohol or controlled substances and that impairment was a substantial contributing cause of the injury, and eliminated the provisions for an employer to have a policy of drug or alcohol testing.

23-1044 (Effective 09-30-09)

Amends subsection (D) to allow the Commission to consider the wages an employee could have earned from employment that has been terminated for reasons unrelated to the industrial accident in determining earning capacity. An intent section states that the amendment is intended to overrule *Arizona Department of Public Safety v. Industrial Commission*, 176 Ariz. 318, 861 P.2d 603 (1993); to clarify that the employee retains all rights to rearrange; and to give the Commission broad discretion to determine an injured worker’s earning capacity, including whether and to what extent to consider relevant evidence of wages earned in employment that has been terminated. Another section states that the amendments to 23-1044(D) apply to injuries that occur on or after the effective date of the amendment.

Amends subsection (F) for a non-substantive grammatical change (changes the location of the word “shall.”)

23-1062.02 (Effective 09-30-09)

Adds a new section titled “Off-label prescription of controlled substances; prescription of schedule II controlled substances; reports; treatment plans; definition.” This new section requires physicians, upon the request of an interested party, to:

- Include information in the physician’s report about the off-label use of a narcotic, opium-based controlled substance, or Schedule II controlled substance by an employee, including the justification for the use of the controlled substance;
- Specify a treatment plan that includes measures to monitor and prevent substance abuse, dependence, addiction or diversion by the employee;
- Include in the treatment plan a medication contract, a plan for subsequent follow-up visits and drug testing, as well as documentation that the medication regime is providing relief that is demonstrated by improved function.
- The new section also provides that the interested party is not responsible for payment for the physician’s services until the physician complies with the new section.
- The new section also defines off-label use.

2010

No changes in 2010.

2011

23-901 (Effective 07-20-11)

Deletes subsection (6)(q) which had included a member of the Arizona Department of Administration

Capitol Police Reserves within the definition of an “employee.” As a result of other legislation, the Capitol Police have merged with and became part of the Department of Public Safety.

23-901 (Effective 01-01-13)

Amends subsection (6)(f) to delete a provision that specified that any dividend from the State

Compensation Fund to the Department of Economic Security vocational rehabilitation program shall be non-reverting.

Note: As a result of 2010 legislation, the State Compensation Fund, a quasi-state agency, is scheduled to become a private mutual insurance company as of January 1, 2013. The 2011 Legislature adopted conforming legislation in anticipation of this transition, including the amendments described herein.

Amends subsection 18 to delete the definition of the State Compensation Fund.

Re-numbered succeeding subsections to conform.

Amends throughout to delete references to the State Compensation Fund.

Amends throughout for non-substantive grammatical changes.

23-941.01 (Effective 07-20-11)

Adds a new section titled “Final settlement agreement; definition.” Note: Original legislation had a section heading as “Settlement of claims; definition.” Section heading was changed, pursuant to authority of § 41-1304.02, to “Final settlement agreement; definition.”

New subsection A states that no final settlement agreement involving a workers’ compensation claim is valid until the agreement is approved by the Commission.

New subsection B describes the requirements to settle undisputed supportive medical maintenance benefits.

New subsection C requires the employer or carrier to notify the attending physician of the approval of a final settlement that terminates entitlement to supportive medical maintenance benefits.

New subsection D defines a “final settlement.”

23-961 (Effective 01-01-13)

Amends subsection D to delete the requirement that the State Compensation Fund deposit cash or securities before transacting business.

Amends subsection J to specify the in-lieu tax for self-insured employers based on the premium that would have been paid if the employer had been insured by an insurance carrier authorized to transact workers compensation insurance in Arizona instead of the prior reference to a plan available from the State Compensation Fund. The Commission is required to adopt rules to specify the premium plans to be used in calculation of rates and premiums used as the basis for the taxes assessed to self-insured employers.

Amends throughout to delete references to the State Compensation Fund.

Temporary **Session Law** specifies the deviation rate (10%) for use in calculating the in-lieu tax for self-insured employers for calendar years 2013, 2014 and 2015.

23-962 (Effective 01-01-13)

Amends subsection A to specify that the reserves established and held by the State Compensation Fund prior to June 30, 1983 for all claims against the state be credited to the state's general fund. The department of administration may procure excess coverage from an insurance carrier rather than from the State Compensation Fund.

Amends subsections B and C to change references to the "State Compensation Fund" to "an insurance carrier."

Amends throughout for non-substantive grammatical changes.

23-963 (Effective 01-01-13)

Amends to delete a reference to the State Compensation Fund.

23-966 (Effective 01-01-13)

Amends title of the subsection to delete "of compensation" and change "fund" to "funds"

Amends subsection A to direct that claims be assigned to the Commission's Special Fund, instead of the State Compensation Fund, where the carrier or self-insured employer does not properly process or pay benefits. Authorizes the Special Fund to use third-party processors and others to assist in the processing and paying of assigned claims and directs the Special Fund to reimburse the Commission's administrative fund for expenses the administrative fund may incur related to the processing and payment of assigned claims.

23-970 (Effective 01-01-13)

Adds a new section titled "Misrepresentation of payroll, job description, job function, or loss history affecting premium payment; violation; classification; penalty; civil action."

New subsection A states that it is unlawful for an employer to willfully misstate payroll, job descriptions, or loss history to an insurance carrier.

New subsection B states that a violation of subsection A is a class six felony.

New subsection C provides for civil penalties and the recovery of attorneys' fees and costs against an employer who violates subsection A, and provides for a four-year statute of limitations.

23-986 (Effective 07-20-11)

Amends throughout for non-substantive grammatical changes.

Re-numbered subsection E for style and to correct references

23-1005 (Effective 01-01-13)

Repealed this subsection that authorized the State Compensation Fund to reinsure risks.

23-1006 (Effective 01-01-13)

Repealed this subsection that authorized the State Compensation Fund to make contracts of insurance.

23-1021 (Effective 01-01-13)

Amends to delete subsection B and deletes lettering for subsection A (subsection A and B were virtually identical with subsection B applying to the State Compensation Fund and subsection A applying to all other carriers and self-insured employers).

23-1026 (Effective 01-01-13)

Amends subsection A to delete a reference to the State Compensation Fund.

23-1029 (Effective 01-01-13)

Amends to delete subsection B and deletes lettering for subsection A.

23-1043.04 (Effective 07-20-11)

Amends subsection A to increase the reporting period from ten days to 30 days after a possible significant exposure and, for a claim involving Methicillin-Resistant Staphylococcus Aureus (MRSA), to require that the employee must be diagnosed with MRSA within 15 days after reporting an exposure.

23-1048 (Effective 07-20-11)

Adds a new section titled “Reasonable accommodations; earning capacity determination; definitions.”

New subsection A specifies wages payable for a modified job position be included in any determination of earning capacity where an employer has provided accommodations to an employee even if the modified job is not available in the open and competitive labor market.

New subsection B(1) defines “Americans with Disabilities Act.”

New subsection B(2) defines “reasonable accommodations.”

23-1062.02 (Effective 07-20-11)

Amends subsection A to add substances that a physician is required to include in the report required by Commission rule. Subsection B authorizes an

interested party to request the physician submit an inquiry regarding an employee’s prescription information to the Arizona State Board of Pharmacy’s Controlled Substances Prescription Monitoring Program.

Amends to add subsection C(2) that enables an employer, carrier, or the Commission to request a change of physicians if the physician does not comply with this section.

Adds subsection D that specifies that an employer, carrier, or the Commission may request the information required by subsection A notwithstanding a prior medical maintenance benefits award and states that an employer or carrier is not liable for bad faith or unfair claims processing for any act taken in compliance of and consistent with this section.

23-1065 (Effective 01-01-13)

Amends subsection A to delete a reference to the State Compensation Fund.

Amends throughout for non-substantive grammatical changes.

23-1070 (Effective 01-01-13)

Amends subsection E to substitute the Commission’s Special Fund for the State Compensation Fund.

Amends throughout to delete references to the State Compensation Fund.

Amends throughout for non-substantive grammatical changes.

23-1091 (Effective 01-01-13)

Amends subsection A to delete a reference to the State Compensation Fund. This amendment results in an employer qualifying for the assigned risk plan if declined by two carriers rather than the prior requirement of the State Compensation Fund and two carriers.

Amends throughout to delete references to the State Compensation Fund.

Amends throughout for non-substantive grammatical changes.

23-1101 et seq.

Adds new Article 12 that requires any person who advocates a legislative proposal comply with certain requirements if the proposal establishes a presumption of compensability for a disease or condition or substantially modifies a statute that establishes a presumption of compensability for a disease or condition; delineates procedures and contents for report to be submitted to Joint Legislative Budget Committee.

2012

23-108.02 (Effective 09-29-12)

Removed “and who are subject to the State personnel board.

23-986 (Effective 08-02-12)

Amends subsection B to remove language that prohibited marketing representatives of the State Compensation Fund from being licensed to sell any insurance other than workers’ compensation insurance.

23-1023 (Effective 08-02-12)

Amends subsection A to allow a workers’ compensation claimant to pursue a remedy against another person whose negligence or wrong further aggravates the employee’s existing industrial injury.

Amends subsection D to provide for and limit the carrier’s lien to amounts expended for compensation and treatment of the aggravation of the existing industrial injury.

23-1026 (Effective 08-02-12)

Adds subsection G to allow an IME physician to disclose data obtained from the Arizona State Board of Pharmacy’s Controlled Substances Prescription

Monitoring Program to the employee, employer, insurance carrier, and the Industrial Commission.

23-1041 (Effective 08-02-12)

Amends subsection E to change the specific index used to adjust the maximum average monthly wage from the “Arizona mean wage” to the “employment cost index.”

23-1062 (Effective 08-02-12)

Amends subsection A for a non-substantive grammatical change.

Amends subsection C to allow an employee to elect payment of workers’ compensation benefits using electronic fund transfers and prepaid debit cards in addition to a negotiable instrument.

23-1062.02 (Effective 08-02-12)

Amends subsection A to clarify that an interested party to a workers’ compensation claim may request an IME physician both request, and report the results of, an inquiry to the Arizona State Board of Pharmacy’s Controlled Substances Prescription Monitoring Program.

23-1062.03 (Effective 08-02-12)

Adds a new section titled “Evidence-based medical treatment guidelines.” This new section directs the Industrial Commission to develop and implement a process for the use of evidence-based treatment guidelines by December 31, 2014 and mandates certain progress reports describing the status of the development and implementation of the process.

2013

23-904 (effective 09-13-13)

Repeals entire section

23-904 (Effective 09-13-13, see Note below)

Adds new section titled “Arizona Worker Injuries in Other State; Injury to Foreign Worker in this State; Evidence of Insurance; Judicial Notice of Other State’s Laws

New subsection A restates prior subsection A with minor non-substantive grammatical/stylistic changes.

New subsection B provides that a worker who is employed in Arizona and sustains an industrial injury while temporarily in another state incidental to employment is entitled to benefits as though the injury occurred in Arizona.

New subsection C provides that a worker and his or her employer from another state are exempt from Chapter 6 (the Workers' Compensation Act) while the worker is temporarily performing work for the employer in Arizona if all of the following are true:

- The employer has workers' compensation coverage in another state that covers the worker while working in Arizona;
- The other state recognizes Arizona's extraterritorial provisions in Chapter 6;
- Employers and workers who are covered in Arizona are likewise exempted from the workers' compensation insurance act or similar laws of the other state (reciprocity); and
- The benefits under the workers' compensation act or similar law of the other state are the exclusive remedy against the employer for an injury or death sustained by the worker while temporarily working in Arizona.
- **New** subsection D provides that a certificate issued by the Commission, Department of Insurance, or similar department of another state certifying that an employer is insured in that state is prima facie evidence the employer had workers' compensation insurance.

New subsection E states that courts shall take judicial notice of the laws of other states where construction of the other state's laws is required.

New subsection F defines "temporarily in a state doing work for an employer" to mean where the worker performs fewer than ninety continuous days of required services under the direction and control

of the employer during the 365 days immediately preceding the injury or injurious exposure.

New subsection G requires a credit for compensation paid in another state against the compensation due under the Arizona workers' compensation laws; directs that a worker is entitled to the full amount of compensation due under the laws of Arizona; and provides that an insurer shall pay any unpaid compensation to a worker up to the amount required by the claim under Arizona law where the compensation under Arizona law is more than the compensation under the laws of the other state or where the compensation paid under the other state is recovered from the worker.

New subsection H states that the new section applies to claims made after the effective date of this section regardless of the date of injury. (see Note below).

Note: New 23-904 is contained in Senate Bill 1148 (Chapter 34). However, Senate Bill 1310 contains a section that states that Chapter 34 (Senate Bill 1148) applies to any claim that has not been accepted as compensable or adjudicated as compensable as of the effective date of Chapter 34 (which is September 13, 2013). The Legislature enacted Senate Bill 1310 as a Session Law and there is no Title 23 citation.

2014

23-901.04 (effective 07-24-2014)

Amends subsection B(2) to substitute "a person with a disability" for the word "disabled."

23-901.07 (effective 07-24-2014)

Amends subsection A to substitute "with disabilities" for the word "handicapped."

Amends subsection B to substitute "for the purposes of" for the word "in" that begins the subsection and substitutes "with a disability" for the word "handicapped."

23-902 (effective 06-30-2015)

Amends subsection E to conform to re-lettering of 23-961.

23-908 (effective 07-24-2014)

Amends subsection C to conform to the newly re-lettered subsection of § 32-1963.01.

Amends throughout for non-substantive grammatical changes.

23-961 (effective 06-30-2015)

Deletes existing subsections D, E, F, and G.

Adds new subsection D to authorize the Director of Insurance to release all or part of the cash or securities that an insurance carrier deposited before the effective date of the amendment and identifies the factors the Director of Insurance shall consider in determining whether to release all or part of the deposit.

Reletters subsections throughout to conform to Section.

23-966 (effective 06-30-2015)

Amends subsection A, B, and C to remove insurance carrier claims from the types of claims the Commission can assign to the Special Fund in the event of non-payment of the claims and the associated authority to recover from the carrier's deposit and other assets.

Deletes subsection D which removes the Commission's assessment authority to reimburse the Special Fund for payments made on claims of non-paying self-insured and other employers.

23-1023 (effective 07-24-2014)

Amends subsection B to specify that the third-party claim rights are assigned to the insurance carrier or self-insured employer if the employee or employee's dependents do not institute an action within one year or if the employee or employee's dependents fail to fully prosecute the third-party claim and the claim is dismissed.

23-1062.01 (effective 07-24-14)

Amends subsection C to add a provision that any court action for the payment of medical billings be commenced within twenty-four months and to state that a subsequent billing or corrective billing does not restart the limitations period.

Amends subsection F to clarify that the interest penalty under subsection A applies to any late payment.

23-1062.02 (effective 07-24-14)

Amends subsection A to require a physician to report certain information for off-label and prescription use of narcotic, opium-based controlled substances, and schedule II controlled substances rather than only when requested by an interested party.

Amends subsection B to specify that a physician who prescribes narcotic, opium-based controlled substances, and schedule II controlled substances shall include in the treatment plan random drug testing and further reporting requirements if the drug testing produces inconsistent results and requires the physician document that the medication regime is providing relief demonstrated by clinically meaningful improvement in function.

Adds a new subsection C requiring a physician to submit an inquiry within two days after writing or dispensing an initial prescription of more than a thirty-day supply of an opioid to the Arizona State Board of Pharmacy and report the results to the carrier, self-insured employer, or the Commission as soon as reasonably practicable but no later than thirty-days from the date of the inquiry.

Adds a new subsection D that requires a physician to report to the carrier, self-insured employer, or the Commission within five days if the result of the inquiry reveals that the employee is receiving opioids from another undisclosed health care provider.

Amends subsection E(1) to replace the phrase "interested party" with "carrier, self-insured employer or Commission."

Amends subsection E(2) to specify the process a carrier, self-insured employer or the Commission must follow to request a change of physician where a physician does not comply with this Section.

Adds subsection F to require drug rehabilitation and detoxification treatment where medically necessary to treat an employee dependent on or addicted to opioids prescribed for a work-related injury.

Adds subsection G to specify that a carrier, self-insured employer or the Commission is not responsible for providing medications subject to this section if the employee resides out of state and the out of state medical provider fails to comply with this section and requires the out of state medical provider to submit an inquiry to that state's controlled substances monitoring database, if one exists.

Adds subsection H to state that this section does not apply to medication administered while receiving in-patient hospital treatment.

Adds subsection J to define "clinically meaningful improvement in function."

Reletters subsections throughout to conform to Section.

23-1065 (effective 07-24-2014)

Amends subsection A to substitute "with disabilities" for the word "disabled."

Amends subsection O and P to substitute reference to A.R.S. § 38-719 with A.R.S. § 38-718.

23-1065 (effective 06-30-2015)

Amends subsection A to reduce the Commission's assessment authority from one and one-half percent to one percent.

Reletters subsections throughout to conform to re-lettering of 23-961.

23-1081 (effective 06-30-2015)

Reletters subsections throughout to conform to re-lettering of 23-961.

Temporary **Session Law** requires the Industrial Commission transfer the sum of \$222,848,153 from the Special Fund to the Arizona Property and Casualty Insurance Guaranty Fund no less than thirty days before June 30, 2015.

Temporary **Session Law** specifies the deviation (10%) for use in calculating the in-lieu tax for self-insured employers for calendar years 2013 through 2020.

2015

23-1026 (effective 07-03-2015)

Amends subsection D to specify that a physician who performs a medical examination is not subject to a complaint for unprofessional conduct to the physician's licensing board if the complaint is based on a disagreement with the physician's findings and opinions resulting from the examination.

Amends throughout for non-substantive grammatical changes.

23-1028 (effective 07-03-2015)

Amends subsection A to specify that if a claimant knowingly makes a false statement or representation to obtain benefits, the forfeiture provision applies to all future disability compensation and the forfeiture provision does not terminate if a conviction is subsequently designated as a misdemeanor.

Adds new subsection D to require that a claimant for compensation personally sign any monthly or annual income status report and that a specific statement be included on any such reporting document.

Amends throughout for non-substantive grammatical changes.

Reletters subsections throughout to conform to Section.

2016

23-101 (effective August 6, 2016)

Amends subsection B. Deletes the reference to the termination date of the originally-appointed Commission members.

Clarifies the termination date of a Commission member's term.

Clarifies that Commission members must be residents of Arizona for "at least" five years prior to appointment.

Amends subsection C. States what a Commissioner must do to receive the per diem salary of \$50.

Provides that salary is only available on days that a Commissioner "prepares for or attends a Commission meeting."

Describes the documentation a Commissioner must submit to the Commission director before receiving a salary.

23-108 (effective August 6, 2016)

Amends subsection A. Clarifies the nature of the director's employment with the Commission.

Deletes the requirement that the director be "subject to confirmation by Senate."

Provides that the governor will appoint the director pursuant to § 38-211 and states that the director will serve at the pleasure of the governor.

Deletes Title 23, Chapter 3, Article 2 (Private Employment Agents) from the scope of the Commission's duties.

Amends subsection B to delete "The director shall serve at the pleasure of the governor," as this language was moved to subsection A.

Amends subsection A for non-substantive stylistic changes.

23-108.01 (effective August 6, 2016)

Amends the section title to be "Powers and duties of director"

Amends newly-lettered subsection A (formerly not lettered) to delete Title 23, Chapter 3, Article 2 (Private Employment Agents) from the scope of the Commission's powers and duties.

Adds new subsection B to permit the director to deny a per diem salary to a Commissioner if the requirements of § 23-101(C) are not satisfied.

Amends subsection A for non-substantive stylistic changes.

23-108.03 (effective August 6, 2016)

Amends subsection B to delete Title 23, Chapter 3, Article 2 (Private Employment Agents) from the scope of the Commission's duties and powers.

Amends subsection B for non-substantive stylistic changes.

23-908 (effective December 31, 2016)

Amends subsection C to state that provisions regarding the use of "interchangeable biological products" that are included in a "schedule of fees for prescription medicines" are subject to specified requirements of § 32-1963.01.

Reletters references to applicable subsections of § 32-1963.01.

Amends subsection F for non-substantive stylistic changes.

23-941 (effective August 6, 2016)

Adds new subsection I.

Grants interested parties a one-time right to a change of administrative law judge (ALJ) without cause in a workers' compensation hearing.

Discusses the timing and procedure for exercising the right to change ALJ and sets forth the requirements of the Notice of Change of ALJ.

Amends former subsection I (re-lettered subsection J). As amended, former subsection I (re-lettered subsection J) applies only to changes of a “presiding” ALJ “for cause.”

Deletes the limitation of only one change (“for cause”) of ALJ per party.

Deletes the words “Within thirty days after the date of notice of hearing” and adopts the time frames provided in new subsection I.

Requires the Chief ALJ to immediately transfer a matter to another ALJ upon receipt of an affidavit for change of ALJ for cause.

Permits an interested party’s authorized agent to file an affidavit for change of ALJ for cause.

Amends former subsection J (re-lettered subsection K) to identify permissible grounds for changing an ALJ “for cause” under re-lettered subsection J.

Adds new subsection L to clarify that, for purposes of new subsection I and re-lettered subsection J, the employer and employer’s insurance carrier will be considered as a single party unless their interests are in conflict.

Amends former subsection K(2) (re-lettered subsection M(2)) by deleting the words “surplus property division.”

Amends throughout for non-substantive stylistic changes.

Reletters subsections throughout to conform the section.

23-941.02 (effective August 6, 2016)

Adds a new section titled “Vexatious litigants; designation; definitions.”

Permits the Chief ALJ or an ALJ designated by the Chief ALJ to designate a pro se litigant as a “vexatious litigant.”

Sets forth the procedure and timeline for a party to request a “vexatious litigant” designation.

Provides that the “vexatious litigant” designation applies only to the claim at issue and states that the pro se litigant may not file a new request for hearing, pleading, motion or other document without leave of the ALJ. Provides examples of vexatious conduct.

23-954 (effective August 6, 2016)

Adds a new section titled “Payment of interest on awards.”

Requires interest payments on: (1) awards entered by the Commission or by Notice of Claim Status awarding permanent partial disability or permanent total disability benefits pursuant to § 23-1044(B) or © and § 1045 (B) or (C), if benefits are not paid within ten days after the date the award or notice becomes final; and (2) claims for dependent benefits, if the claim is denied and subsequently accepted or found compensable by award of the Commission, from the date the claim for benefits was filed.

Provides that interest on benefits be paid at the annual rate of 1% plus the prime rate (as published in Statistical Release H.15), not to exceed 10%.

23-1044 (effective August 6, 2016)

Amends subsection A to delete “and fifty per cent of retirement and pension benefits received from the insured or self-insured employer during the period of temporary partial disability” from what may be “considered wages able to be earned” during the period of temporary partial disability.

Amends throughout for non-substantive stylistic changes.

23-106 (effective August 6, 2016)

Amends the section title to include “translation services”

Adds new subsection B, which provides that “medical, surgical, and hospital benefits” include translation services, if needed.

Authorizes a carrier, self-insurance pool or employer that does not direct care to choose the translator if the translator is certified by an outside agency and not employed by the carrier, self-insured pool or employer.

Provides that the parties may agree on a non-certified translator where a certified translator cannot be located.

Amends former subsection B (re-lettered subsection (C)) for non-substantive stylistic changes.

Reletters subsections throughout to conform the section.

23-1070.01 (effective August 6, 2016)

Amends subsection A (2) by adding the words “Notice or,” and “or J” to reflect the amendments made to § 23-941.

Amends throughout for non-substantive stylistic changes.

2017

23-722.04 (effective August 9, 2017)

Amends subsection A to include the Industrial Commission of Arizona, Department of Insurance, and Attorney General as entities permitted to receive unemployment insurance information from the Department of Economic Opportunity for use in the prevention, investigation, and prosecution of workers’ compensation fraud.

Amends throughout for non-substantive stylistic changes.

23-901 (effective August 9, 2017)

Amends definition of “occupational disease” in subsection 13(c) to include heart-related,

perivascular, and pulmonary cases involving firefighters under new section A.R.S. § 23-1043.05.

Amends throughout for non-substantive stylistic changes.

23-901.01 (effective August 9, 2017)

Amends subsection B. Moves part of former subsection (B) to new subsection (B)(1).

Adds new subsection (B)(2) which creates a presumption of an “occupational disease” (as defined in A.R.S. § 23-901(13) (c)) arising out of employment for firefighters who contract a disease, infirmity, or impairment caused by buccal cavity and pharynx, esophagus, large intestine, lung, kidney, prostate, skin, stomach, or testicular cancer or non-Hodgkin’s lymphoma, multiple myeloma, or malignant melanoma that result in disability or death.

Amends part of former subsection B (re-lettered subsection C).

As amended, re-lettered subsection C outlines the three existing criteria for applying the subsection B presumptions and adds a new fourth criteria for applying the new subsection (B)(2) presumption. To apply the new subsection (B)(2) presumption, a firefighter must (in addition to the other three criteria) receive a physical examination that is reasonably aligned with the National Fire Protection Association Standard on Comprehensive Occupational Medical Program for Fire Departments (NFPA 1582).

Amends former subsection C (re-lettered subsection D).

As amended, re-lettered subsection D provides that the subsection B presumptions apply to former firefighters or peace officers who are: (1) sixty-five years of age or younger and (2) diagnosed with a cancer that is listed in subsection B not more than fifteen years after the firefighter’s or peace officer’s last date of employment as a firefighter or peace officer.

Amends former subsection D (re-lettered subsection E).

Deletes language that strictly prohibited application of the subsection B presumptions to respiratory tract cancers if a firefighter or peace officer had “smoked tobacco products.”

As amended, re-lettered subsection E increases the evidentiary showing required to preclude application of the subsection B presumptions for cancers of the respiratory tract. To preclude application of the subsection B presumptions for cancers of the respiratory tract, evidence must exist to show that the firefighter’s or peace officer’s exposure to cigarettes or tobacco products outside of the scope of the firefighter’s or peace officer’s official duties is a substantial contributing cause in the development of the cancer.

Adds new subsection F to make clear that the subsection B presumptions may be rebutted by a preponderance of the evidence that there is a specific cause of the cancer, other than an occupational exposure to a carcinogen as defined by the International Agency for Research on Cancer.

Amends throughout for non-substantive stylistic changes.

Reletters subsections throughout to conform the section.

23-941.01 (effective October 31, 2017)

Repeals the former section titled “Final settlement agreements; definition.”

Adds a new section titled “Settlement of accepted claims; exception; definitions.”

Subsection A **permits** interested parties to a workers’ compensation claim to: (1) settle and release all or any part of an accepted claim for compensation, benefits, penalties, or interest; or (2) negotiate a full and final settlement in claims where the period of disability has been terminated.

Subsection B **states** requirements for a full and final settlement.

Subsection C **requires** a claimant who is represented by counsel to include certain attestations in a full and final settlement.

Subsection D **requires** the Administrative Law Judge Division of the Industrial Commission to perform the following functions before approving a full and final settlement involving an unrepresented claimant: (1) hold a hearing with the unrepresented claimant; (2) make specific factual findings regarding that the requirements in subsection B and C(2)-C(5); and (3) make a finding that the settlement is fair and reasonable to the claimant.

Subsection E **states** that approval of a full and final settlement by the Industrial Commission is required and directs the Industrial Commission to consider whether a full and final settlement is “in the best interest of the employee” before approving a full and final settlement.

Subsection F **requires** that lump sum settlement payments be made within 15 days after the award approving the settlement becomes final.

Subsection G **requires** a carrier, Special Fund, or a self-insured employer to notify attending physicians of the approval of a full and final settlement if the settlement terminates the employee’s entitlement to medical benefits.

Subsection G also **clarifies** that a carrier, Special Fund, or a self-insured employer remain responsible for payment of medical benefits rendered before approval of a full and final settlement unless the medical benefits are subject to a dispute or were included in the settlement.

Subsection H **prohibits** full and final settlements in cases that have resulted in “total and permanent disability” under A.R.S. § 23-1045(C) & (D).

Subsection I **prohibits** full and final settlement of claims unrelated to the applicable claim for compensation, benefits, penalties, and interest.

Subsection J **precludes** settlement under the section for claims that have been denied.

Subsection K **defines** “full and final settlement” and “Special Fund.”

23-1043.05 (effective August 9, 2017)

Adds a new section titled “Heart-related, perivascular and pulmonary cases; firefighters; definition.”

Subsection A **provides** that a heart-related, perivascular, or pulmonary injury, illness or death of a firefighter is presumed a compensable “occupational disease” (as defined in A.R.S § 23-901(13)(c)) if the firefighter: (1) passed a physical examination before employment, which did not indicate evidence of a heart-related, perivascular, or pulmonary injury or illness; (2) received a physical examination reasonably aligned with the National Fire Protection Association Standard on Comprehensive Occupational Medical Program for Fire Departments (NFPA 1582); and (3) was exposed to a known event and the injury, illness, or death occurred within 24 hours after the exposure and was reasonably related to the exposure.

Subsection B **states** that the subsection A presumption may be rebutted by a preponderance of the evidence that the cause of the injury, illness, or death was other than the employment.

Subsection C **precludes** application of the subsection A presumption if evidence exists to show that the firefighter’s exposure to cigarettes or tobacco products outside of the scope of the firefighter’s official duties is a substantial contributing cause in the development of the injury, illness, or death.

Subsection D **defines** “firefighter.”

23-1062 (effective August 9, 2017)

Adds new subsection C.

Adds reimbursement for reasonable travel expenses to compensation for medical, surgical, and hospital benefits if a claimant must travel more than 25 miles from the claimant’s place of residence.

Amends subsection A for non-substantive stylistic changes.

Reletters subsections throughout to conform the section.

23-1604 (effective August 9, 2017)

Adds new section titled “Franchisor and franchisee; owner or a mark and licensee; employment relationship, definitions.”

States that, for purposes of Title 23: (1) a franchisor is not an employer or co-employer of a franchisee or employee of a franchisee unless the franchisor agrees in writing to assume the role of employer or co-employer; and (2) a trademark owner is not an employer or co-employer of a licensee or employee of a licensee unless the mark owner agrees in writing to assume the role of employer or co-employer.

2018

23-901 (amendments apply to workers’ compensation policies issued or renewed on or after July 1, 2019)

Amends the definition of “employee,” “workman,” “worker,” and “operative” to include: A working member of a limited liability company who owns less than fifty percent of the membership interest in the company. A working member of a limited liability company who owns fifty percent or more of the membership interest in the company if the company’s workers’ compensation insurance carrier has issued an endorsement covering the working member. A working shareholder of a corporation who owns less than fifty percent of the beneficial interest in the corporation. A working shareholder of a corporation who owns fifty percent or more of the beneficial interest in the corporation if the

corporation's workers' compensation insurance carrier has issued an endorsement covering the working shareholder.

As amended, subsections (6)(r) and (6)(t) set forth the basis for computing wages for premium payments and compensation benefits for working members of limited liability companies and working shareholders of corporations who elect to secure workers' compensation insurance coverage.

Amends throughout for non-substantive stylistic changes.

23-908 (effective August 3, 2018)

Amends subsection B to authorize the Industrial Commission to include reimbursement guidelines in the Arizona Physicians and Pharmaceutical Fee Schedule related to medications dispensed in settings that are not accessible to the general public, including physician-dispensed medications.

Amends throughout for non-substantive stylistic changes.

23-941.1 (effective August 3, 2018)

Amends subsection (A)(2) to permit negotiation of a full and final settlement of an accepted claim if the period of temporary disability has been terminated by a final notice of claim status, an award of the Industrial Commission, or a stipulation of the interested parties.

Amends subsection B to clarify the requirements for a full and final settlement, including the requirement that parties attach certain information when submitting a full and final settlement for review by the Industrial Commission.

Amends subsection C to clarify the "signed attestations" that must be included in all full and final settlements.

As amended, subsection (C)(2) requires an attestation that the carrier, Special Fund, or self-insured employer has disclosed the amount of

the settlement that represents the settlement of future medical, surgical, and hospital benefits.

As amended, new subsection (C)(3) requires an attestation that the carrier, Special Fund, or self-insured employer has disclosed the total amount of the future indemnity benefit, the employee's rated age, if applicable, the employee's life expectancy, the source of the employee's life expectancy, the present value of future indemnity benefits, the discount rate used to calculate present value, and the amount of the settlement that represents the settlement of future indemnity benefits.

As amended, former subsection (C)(5) (re-lettered subsection (C)(6)) requires an attestation that the parties have conducted a search for and taken reasonable steps to satisfy unpaid medical charges.

As amended, new subsection (C)(7) requires an attestation that coercion, duress, fraud, misrepresentation, and undisclosed additional agreements were not used to achieve the full and final settlement.

Adds new subsection D, which directs an administrative law judge of the Industrial Commission to approve a full and final settlement where the requirements of subsection B are satisfied, the attestations of subsection C are present, and the employee is represented by counsel.

Amends former subsection D (re-lettered subsection E) to eliminate the requirement that the Industrial Commission evaluate full and final settlements involving unrepresented employees using a "fair and reasonable" standard.

As amended, former subsection D (re-lettered subsection E) requires administrative law judges of the Industrial Commission to make specific factual findings regarding whether the requirements of subsections B and C are satisfied when an employee is unrepresented.

As amended, former subsection D (re-lettered subsection E) requires that the administrative law

judge conduct a hearing and perform a detailed inquiry into the attestations provided by an unrepresented employee pursuant to subsection C and provides instructions regarding the scope of the hearing.

Removes former subsection E to eliminate the requirement that the Industrial Commission evaluate full and final settlements using a “best interests of the employee” standard.

Adds new subsection F, which prohibits the Commission from approving a full and final settlement if the requirements of subsections B and C are not satisfied.

Amends throughout for non-substantive stylistic changes.

Reletters subsections throughout to conform the section.

23-941.03 (effective August 3, 2018)

Reinstates former section 23-941.01 titled “Final settlement agreements; definition” regarding final settlements involving undisputed entitlement to supportive medical maintenance benefits.

Clarifies that the section does not prohibit settlements that do not constitute “final settlements,” as defined in the section.

Amends former section 23-941.01 for non-substantive stylistic changes.

23-1062.02 (effective August 3, 2018)

Adds new subsection A that requires physicians who prescribe schedule II controlled substances to an employee to comply with Title 32, Chapter 32, Article 4, which establishes requirements, restrictions, and exceptions related to the prescribing of controlled substances.

Amends former subsection A (re-lettered subsection B) to clarify content that must be included in reports required under A.A.C. R20-5-112 (Physician’s Initial Report of Injury) and R20-5-113 (Physician’s

Duty to Provide Signed Reports) related to the use of narcotic or opiate based controlled substances listed in schedule II or the prescription of any opioid medication.

Amends former subsection C (re-lettered subsection D) to eliminate the requirement that a physician submit an inquiry to the Arizona state board of pharmacy within two business days of writing or dispensing an initial prescription order of at least a thirty-day supply of an opioid medication for an employee.

As amended, former subsection C (re-lettered subsection D) now requires that a physician, before prescribing an opioid analgesic or benzodiazepine controlled substance listed in schedule II, III, or IV, and at least quarterly while the prescription remains a part of treatment, obtain a patient utilization report regarding the employee from the controlled substances prescription monitoring program’s central database tracking system as required by A.R.S. § 36-2606.

As amended, former subsection C (re-lettered subsection D) also permits a carrier, self-insured employer, or the Industrial Commission to request that a physician obtain a patient utilization report regarding an employee not more than once every two months.

Amends former subsection D (re-lettered subsection E) to replace the “result of an inquiry to the Arizona state board of pharmacy” with the “patient utilization report from the controlled substances prescription monitoring program’s central database tracking system.”

Amends former subsection (E)(2) (re-lettered subsection (F)(2)) to eliminate the requirement that an employee who has been ordered to change physicians due to non-compliance must select a new physician “whose practice includes pain management.”

Amends former subsection G (re-lettered subsection H) to provide that a carrier, self-insured employer,

and the Industrial Commission are not responsible for providing medications subject to the section if an employee resides out of state and the out-of-state physician fails to comply with the section.

Deletes former subsection H, which stated that the section did not apply to medications administered to the employee while the employee is receiving inpatient hospital treatment.

Amends subsection I to clarify that a carrier or self-insured employer is not liable for bad faith or unfair claims processing for any act reasonably necessary to monitor or assess the appropriateness and effectiveness of an employee's opioid use.

Amends the definitions in subsection J, including the definition of "clinically meaningful improvement in function." Deletes the definition of "off-label use." Adds new definitions for "substance use risk assessment" and "traumatic injury."

2019

23-966 (effective August 27, 2019)

Amends subsection C to designate the Special Fund as the successor in interest to all excess insurance policies in effect at the time of an assignment under § 23-966(A) that insure any part of the self-insured employer's financial obligations under Arizona's workers' compensation laws.

Provides that the Special Fund has direct recovery rights against excess insurers for all covered amounts spent under § 23-966, subject to applicable coverage terms and policy limits.

2020

No changes in 2020.

2021

23-901 (effective September 29, 2021)

Amends definition of "personal injury by accident arising out of and in the course of employment" to

include an occupational disease under new section 23-901.09.

Adds new definition of "serve" or "service," which includes mailing to a last-known address or transmitting by other means, including electronically, with written consent of the receiving party.

Amends throughout for non-substantive stylistic changes.

23-901.01 (effective September 29, 2021)

Amends subsections B through G to apply only to "peace officers;" removes all references to firefighters and all language applicable to firefighters.

Amends subsection C, which states the criteria for applying the subsection B presumption and deletes the following requirement: "The [] peace officer was exposed to a known carcinogen as defined by the international agency for research on cancer and informed the department of this exposure, and the carcinogen is reasonably-related to the cancer."

Amends subsection D to make the subsection B presumption applicable to peace officers currently in service.

Amends subsection F to require "clear and convincing evidence," rather than "a preponderance of the evidence" to rebut a presumption established under subsection B.

23-901.09 (effective September 29, 2021)

Adds a new section titled "Presumption; cancers; firefighters and fire investigators; applicability; definition."

Subsection A(1) **establishes** a presumption of an occupational disease deemed to arise out of employment for any disease, infirmity or impairment of a firefighter's or fire investigator's health that is caused by brain, bladder, rectal or colon cancer, lymphoma, leukemia or adenocarcinoma or

mesothelioma of the respiratory tract and that results in disability or death.

Subsection A(2) **establishes** a presumption of an occupational disease deemed to arise out of employment for any disease, infirmity or impairment of a firefighter's or fire investigator's health that is caused by buccal cavity, pharynx, esophagus, large intestine, lung, kidney, prostate, skin, stomach, ovarian, breast or testicular cancer or non-Hodgkin's lymphoma, multiple myeloma or malignant melanoma and that results in disability or death.

Subsection B **states** the criteria that must be satisfied to be granted a presumption in Subsection A(1) or (A)(2), including: (1) the firefighter or fire investigator must have passed a physical examination before employment that did not indicate evidence of cancer; (2) the firefighter or fire investigator was assigned to hazardous duty for at least five years; and (3) (only for the presumption under (A)(2) and only for firefighters), the firefighter must have received a physical examination that is reasonably aligned with the national fire protection association standard on comprehensive occupational medical program for fire departments (NFPA 1582).

Subsection C **provides** that the presumptions in Subsection A apply to firefighters or fire investigators currently in service and former firefighters and fire investigators who are sixty-five years of age or younger and who are diagnosed with a cancer listed in Subsection A not more than 15 years after the last date of employment as a firefighter or fire investigator.

Subsection D **provides** that the presumptions in Subsection A do not apply to cancers of the respiratory tract if there is evidence that exposure to cigarettes or tobacco products outside the scope of official duties is a "substantial contributing cause" of the cancer.

Subsection E **provides** that the Subsection A presumptions may be rebutted by "clear and convincing evidence that there is a specific cause of the cancer other than an occupational exposure to a

carcinogen as defined by the International Agency for Research on Cancer."

Subsection F **defines** "firefighter" and "fire investigator."

23-908 (effective April 9, 2021)

Amends subsection B to clarify that the definition of "settings that are not accessible to the general public" do not include mail order pharmacies delivering pharmaceutical services to workers' compensation claimants, if both of the following apply: (1) the pharmacy does not limit or restrict access to claimants with an affiliation to a medical provider or other entity; and (2) any medical provider or other entity referring a claimant to the pharmacy does not receive or accept any rebate, refund, Commission, preference or other consideration as compensation for the referral.

Adds new subsection J to state that the Commission's Fee Schedule does not prohibit: (1) a healthcare provider or pharmacy from entering into a separate contract or network that governs fees, in which case reimbursement shall be made according to the applicable contracted charge or negotiated rate; and (2) an employer from directing medical, surgical or hospital care pursuant to the provisions of section 23-1070.

Amends throughout for non-substantive stylistic changes.

23-941 (effective September 29, 2021)

Amends subsection D to require that a notice of hearing be "served" on all parties in interest, as the term is defined in 23-901.

Amends throughout for non-substantive stylistic changes.

23-942 (effective September 29, 2021)

Amends subsections C, D, G, and H to require "service" of a request for review, notice of review, and decision on review," as the term is defined in 23-901.

Amends throughout for non-substantive stylistic changes.

23-971 (effective September 29, 2021)

Adds a new section titled “Firefighter and fire investigator cancer claim information; data sharing; definitions.”

Subsection A **requires** all insurance carriers and self-insured employers who cover firefighters and fire investigators to “compile and report to the Commission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators.”

Subsection B **identifies** the specific information that must be reported under Subsection A, including: (1) type of cancer; (2) total claim costs; (3) claim reserves; and (4) other information requested by the Commission.

Subsection C **prohibits** the Commission from obtaining personally-identifiable information.

Subsection D **requires** the Commission to compile and publish the claim-related information to assist with rate setting and reserving.

Subsection D **defines** “firefighter” and “fire investigator.”

23-1026 (effective May 5, 2021)

Amends subsection B to **provide** that a medical examination requested by the Commission, an employer, or an insurance carrier may be conducted via telehealth with the consent of both the employee and the requesting party.

Amends throughout for non-substantive stylistic changes.

23-1047 (effective September 29, 2021)

Amends subsection C to require “service” of an ALJ determination on compensation for partial and permanent disability, as the term is defined in 23-901.

Amends throughout for non-substantive stylistic changes.

23-1061 (effective September 29, 2021)

Amends subsection F to require “service” of a denial of a claim, any change in the amount of compensation, or the termination of a claim, as the term is defined in 23-901.

Amends throughout for non-substantive stylistic changes.

23-1701 (effective Sept. 29, 2021, retroactive to June 30, 2021)

Adds a new section titled “Definitions;” defines terms pertaining to the Municipal Firefighter Cancer Reimbursement Fund.

23-1702 (effective Sept. 29, 2021, retroactive to June 30, 2021)

Adds a new section titled “Municipal firefighter cancer reimbursement fund; exemption, rulemaking; annual report;” establishes the Municipal Firefighter Cancer Reimbursement Fund and how the Fund will operate.

23-1703 (effective Sept. 29, 2021, retroactive to June 30, 2021)

Adds a new section titled “Assessment;” outlines the procedure for the Commission to conduct annual assessments related to the Municipal Firefighter Cancer Reimbursement Fund.

2022

23-908 (effective March 24, 2022)

Amends subsection C to prescribe specific procedural steps associated with adoption of annual updates to the Physicians’ and Pharmaceutical Fee Schedule.

Amends subsection J for non-substantive stylistic changes.

23-908 (effective September 24, 2022)

Amends subsection A to narrow the scope of workplace injuries that must be reported to the Commission by an employer or treating physician.

As amended, only workplace injuries that require “medical treatment,” as defined in subsection A, must be reported.

23-963.01 (effective September 24, 2022)

Adds new subsection E to require application of experience rating adjustments to reduce the impact of medical-only claims on an employer’s experience modification calculation.

Amends throughout for non-substantive stylistic changes.

23-1061 (effective September 24, 2022)

Amends subsection H to clarify that an insurance carrier or self-insured employer is responsible for paying medical, hospital, and laboratory expenses if a claim is reopened and the expenses were incurred within the 15-day period before the petition to reopen was filed.

Adds new subsection N and amends subsection A to require an insurance carrier or self-insured employer who receives written notification of an injury from a worker who intends to file a claim for workers’ compensation to: (1) forward the written notification to the Commission within seven business days, and (2) inform the worker of the requirement to file a claim.

Specifies that the one-year period within which to file a claim in subsection A is suspended from the date that a carrier or self-insured employer receives the written notice until the date the written notice is provided to the Commission.

Directs the Commission, upon receipt of such written notice, to notify the employee of the responsibility to file a claim.

Amends throughout for non-substantive stylistic changes.

23-1702 (effective September 24, 2022)

Amends subsection C to clarify that the annual distribution from the Municipal Firefighter Cancer Reimbursement Fund may not exceed the statewide aggregate of all compensation and benefits paid by Municipal Payers to municipal firefighters and fire investigators pursuant to A.R.S. § 23-901.09 for the relevant fiscal year.

Amends subsection C to clarify that undistributed monies in the Municipal Firefighter Cancer Reimbursement Fund at the end of a fiscal year will remain in the Fund for distribution in future years.

Amends subsection F to clarify that the Commission does not “approve” reimbursement claims.

Amends subsection E for non-substantive stylistic changes.

23-1703 (effective September 24, 2022)

Amends subsection A to direct the Commission to collect \$15,000,000 each fiscal year from cities and towns.

Amends subsection B to resolve an internal inconsistency between subsections B and C regarding withholding of shared revenues.

Amends throughout for non-substantive stylistic changes.

2023

23-1066

Amends to clarify that a Guardian Ad-Litem represents the best interest of a minor or incapacitated person, and eliminates “trustee” from the statute.

Amends to make clear that all references to a Guardian are in fact references to a Guardian Ad Litem.

Amends throughout for non-substantive stylistic changes.

23-934

Adds a new section directing the Commission to establish a fraud unit for the purpose of investigating

fraudulent activities, statements or representations made in connection with workers' compensation claims.

Appendix F

U.S. Department of Labor, Bureau of
Labor Statistics, Fatality Rates

**U.S. BUREAU OF LABOR STATISTICS**

Bureau of Labor Statistics > Injuries, Illnesses, and Fatalities > Home

Injuries, Illnesses, and Fatalities

Search Injuries, Illnesses [IIF Home](#)[IIF Publications](#)[IIF Data](#)[IIF Methods](#)[About IIF](#)[Contact IIF](#)**Fatal injury rates⁽¹⁾ by state, all ownerships, 2007-21**

State	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Alabama	5.4	5.3	4.3	5.1	4.0	4.3	4.0	4.0	3.7	5.2	4.3	4.5	4.2	4.2	5.5
Alaska	9.3	10.6	5.6	11.5	11.1	8.9	7.9	7.8	4.1	10.6	10.2	9.9	14.1	10.7	6.2
Arizona	3.5	3.4	2.9	2.8	2.7	2.3	3.5	3.1	2.4	2.6	3.0	2.5	2.7	3.1	2.1
Arkansas	7.2	6.8	6.4	7.6	8.0	5.4	5.6	5.7	5.8	5.3	6.1	6.3	5.0	5.4	5.8
California	2.7	2.8	2.6	2.1	2.4	2.3	2.4	2.0	2.2	2.2	2.2	2.3	2.5	2.9	2.8
Colorado	5.1	4.2	3.4	3.7	3.9	3.5	2.7	3.3	2.9	3.0	2.8	2.6	2.9	2.9	3.4
Connecticut	2.2	1.6	2.0	3.0	2.2	2.1	1.8	2.1	2.6	1.6	1.9	2.8	1.4	1.8	1.4
Delaware	2.5	2.3	1.9	2.2	2.6	3.1	2.6	2.8	1.9	2.6	2.4	1.6	4.1	1.7	2.8
District of Columbia	4.2	3.1	4.0	5.6	3.1	3.6	7.3	3.1	2.4	1.4	3.4	2.8	2.5	3.8	3.6
Florida	4.4	3.5	3.2	3.0	2.9	2.7	2.8	2.7	3.1	3.6	3.3	3.5	3.2	3.2	3.4
Georgia	4.4	4.2	2.8	2.8	2.8	2.5	2.8	3.6	4.3	3.9	4.1	3.8	4.3	4.3	4.0
Hawaii	3.7	2.4	2.1	3.2	4.2	3.4	1.6	5.0	2.6	2.4	2.2	3.4	4.1	2.9	2.2
Idaho	4.5	5.1	4.3	4.9	5.1	2.7	4.3	4.7	4.8	4.1	4.8	5.8	4.1	4.1	3.3
Illinois	3.0	3.3	2.9	3.7	3.1	2.5	3.1	2.9	2.9	2.9	2.8	3.1	2.7	2.6	3.1
Indiana	4.2	5.0	4.7	4.2	4.5	4.2	4.4	4.4	3.9	4.5	4.5	5.6	4.7	5.4	5.2
Iowa	5.8	5.9	5.6	5.2	6.3	6.6	4.7	6.0	3.9	4.8	4.7	4.9	4.7	4.0	3.3
Kansas	7.2	5.3	5.8	6.5	5.9	5.7	4.2	5.5	4.4	5.2	5.2	4.5	6.0	4.2	4.6
Kentucky	5.9	5.9	6.0	4.1	5.4	4.9	4.7	4.5	5.5	5.0	3.8	4.2	4.2	5.4	5.2
Louisiana	7.7	7.3	8.0	6.2	6.3	6.4	6.3	6.3	5.8	5.0	6.3	5.1	6.2	5.9	7.7
Maine	3.2	3.9	2.8	3.3	4.2	3.2	3.1	2.9	2.5	2.4	2.7	2.5	3.0	3.1	2.9
Maryland	3.1	2.2	2.5	2.7	2.6	2.6	2.7	2.6	2.4	3.2	3.0	3.4	2.6	2.2	2.8
Massachusetts	2.4	2.2	2.2	1.8	2.2	1.4	1.8	1.7	2.1	3.3	3.2	2.7	2.4	2.3	2.9
Michigan	2.6	2.8	2.3	3.6	3.5	3.4	3.3	3.3	3.1	3.5	3.4	3.4	3.6	3.1	3.3
Minnesota	2.8	2.5	2.4	2.8	2.3	2.6	2.6	2.3	2.7	3.4	3.5	2.7	2.6	2.4	2.8
Mississippi	8.0	6.3	6.3	6.4	5.5	5.5	6.2	7.1	6.8	6.3	6.2	6.7	5.2	4.2	3.5
Missouri	5.7	5.4	5.6	4.2	4.9	3.3	4.3	3.9	4.3	4.3	4.4	5.1	3.7	4.0	5.4
Montana	11.2	8.2	12.1	8.2	11.2	7.3	5.8	4.9	7.5	7.9	6.9	5.5	7.8	6.0	8.0
Nebraska	6.7	5.7	6.2	6.3	3.9	5.2	4.0	5.8	5.4	6.3	3.6	4.7	5.4	5.2	4.1
Nevada	5.4	3.3	2.2	3.7	3.1	3.6	3.0	3.1	3.5	4.2	2.4	2.8	2.8	3.0	3.3
New Hampshire	2.1	1.1	0.9	0.9	1.2	2.2	2.1	2.6	2.7	3.2	1.6	2.9	1.5	2.2	3.2
New Jersey	2.5	2.3	2.6	2.2	2.6	2.4	2.6	2.1	2.3	2.4	1.6	2.0	1.8	2.2	2.7
New Mexico	5.8	3.5	5.2	4.9	6.6	4.8	6.7	6.7	4.1	4.9	4.7	4.7	6.2	4.6	6.2
New York	2.5	2.4	2.2	2.2	2.5	2.4	2.1	2.8	2.7	3.1	3.5	3.1	3.1	2.9	2.9
New York City	2.3	2.6	1.9	2.0	2.2	2.3	1.6	2.2	2.0	1.5	2.3	2.0	2.5	1.9	2.0
North Carolina	3.9	3.9	3.3	3.5	3.7	3.5	2.5	3.1	3.4	3.7	3.9	3.8	4.0	4.4	3.9
North Dakota	7.1	8.3	7.9	8.5	12.4	17.7	14.9	9.8	12.5	7.0	10.1	9.6	9.7	7.4	9.0
Ohio	2.9	3.2	2.8	3.2	3.1	3.1	3.0	3.6	3.9	3.1	3.3	3.0	3.1	2.4	3.4
Oklahoma	6.5	6.4	5.3	6.3	5.5	6.1	5.8	6.2	5.5	5.6	5.5	5.2	4.2	4.6	5.1
Oregon	3.8	3.1	3.9	2.9	3.4	2.6	2.9	3.9	2.6	3.9	3.2	3.1	3.5	3.4	3.3
Pennsylvania	3.7	4.1	3.1	4.0	3.4	3.4	3.2	3.1	3.0	2.8	3.0	3.0	2.6	2.7	2.9

(1) Workers under the age of 16 years, volunteer workers, and members of the resident military are not included in rate calculations to maintain consistency with the Current Population Survey (CPS) and Local Area Unemployment Statistics (LAUS) employment. The ownership category government is not presented separately and may be included in any industry category. In 2007, the Census of Fatal Occupational Injuries (CFOI) adopted hours-based state fatal injury rates. Employment-based rates were used previously. Because of substantial differences between rates calculated using the two methods, hours-based state fatal injury rates should not be compared to the employment-based rates from previous years.

Note: Dashes indicate that a fatal injury rate was not calculated because the data did not meet publication criteria or there were no data reported.

Source: U.S. Bureau of Labor Statistics, Current Population Survey, Local Area Unemployment Statistics, Census of Fatal Occupational Injuries, December 2022.

State	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Rhode Island	1.0	1.2	1.5	1.9	1.5	1.7	2.1	2.1	1.2	1.8	1.6	1.8	1.8	1.1	1.0
South Carolina	6.2	4.5	4.0	3.6	4.5	3.5	3.9	3.3	5.6	4.4	4.2	4.6	4.8	4.8	5.0
South Dakota	5.4	6.9	5.9	8.8	6.7	6.7	4.7	7.2	4.9	7.5	7.3	6.9	4.7	7.8	4.7
Tennessee	5.5	5.1	4.5	5.4	4.5	3.8	3.6	4.8	3.7	4.3	4.4	4.1	4.0	5.1	4.4
Texas	5.1	4.4	4.6	4.4	4.0	4.8	4.4	4.5	4.5	4.4	4.3	3.8	4.7	3.9	4.2
Utah	6.0	5.1	3.9	3.4	3.3	3.0	2.9	4.2	3.2	3.2	2.9	3.4	3.5	3.4	3.4
Vermont	2.8	3.2	2.9	3.9	2.6	3.5	2.2	3.2	2.9	3.2	7.0	3.5	3.2	2.8	3.3
Virginia	3.7	4.1	3.3	2.8	3.4	3.8	3.2	2.8	2.8	4.0	2.9	3.5	4.3	3.0	3.2
Washington	2.9	2.6	2.5	3.4	1.9	2.2	1.7	2.7	2.1	2.4	2.5	2.4	2.3	2.5	2.1
West Virginia	7.8	7.2	5.7	13.7	5.9	6.9	8.6	5.2	5.0	6.6	7.4	7.9	6.4	6.6	5.2
Wisconsin	3.6	2.7	3.4	3.4	3.3	4.0	3.5	3.5	3.6	3.6	3.5	3.8	3.8	4.1	3.4
Wyoming	17.1	12.4	7.5	12.9	11.6	12.2	9.5	13.1	12.0	12.3	7.7	11.5	12.0	13.0	10.4

(1) Workers under the age of 16 years, volunteer workers, and members of the resident military are not included in rate calculations to maintain consistency with the Current Population Survey (CPS) and Local Area Unemployment Statistics (LAUS) employment. The ownership category government is not presented separately and may be included in any industry category. In 2007, the Census of Fatal Occupational Injuries (CFOI) adopted hours-based state fatal injury rates. Employment-based rates were used previously. Because of substantial differences between rates calculated using the two methods, hours-based state fatal injury rates should not be compared to the employment-based rates from previous years.

Note: Dashes indicate that a fatal injury rate was not calculated because the data did not meet publication criteria or there were no data reported.

Source: U.S. Bureau of Labor Statistics, Current Population Survey, Local Area Unemployment Statistics, Census of Fatal Occupational Injuries, December 2022.

Fatal injury rate computation

Fatal injury rates depict the risk of incurring a fatal occupational injury and can be used to compare risk among worker groups with varying employment levels. Since employment data are not collected by CFOI, fatal injury rates are calculated using CPS and LAUS data. Each state rate in the table above represents the number of fatal occupational injuries per 100,000 full-time equivalent workers and was calculated as:

Fatality rate = $(N_S/EH_S) \times 200,000,000$ where

N_S = number of fatal work injuries in the state

EH_S = total hours worked by all employees in the state during the calendar year

200,000,000 = base for 100,000 equivalent full-time workers (working 40 hours per week, 50 weeks per year)

State rates by industry were imputed by using national-level "average hours" and "at work" information from CPS to calculate the average annual number of hours for each employee, since these data are not available at the state level. EH_S (total hours worked by all employees in the state during the calendar year) was calculated as:

$EH_S = HW_N \times E_S$ where

E_S = State employment (from LAUS)

HW_N = average annual number of hours for each employee at the national level (from CPS)

Fatal injury rate limitations

State industry rates are not directly comparable to national industry rates. Because state rates include government workers in their respective industry and are not broken out separately, both the numerator and denominator include a different group of workers than that of the national rates. State industry rates are not comparable to other states because of the large differences in the industry composition of employment by state.

There are several **limitations** of using CPS data in CFOI rate calculations. LAUS estimates for states are derived from signal-plus-noise models that use the monthly employment and unemployment measures tabulated from the CPS as the primary input and therefore the caveats from CPS apply to the LAUS data as well.

- State of residence versus state of incident: The CPS counts workers by their state of residence, whereas the CFOI counts workers by state of incident.
- Primary job versus job at the time of incident: The CPS annual average employment data used in the rate calculations count workers according to their primary job, whereas CFOI uses the job held when fatally injured.
- Employment sampling errors: The CPS data uses a sample of households, therefore the CPS estimates, and the fatal injury rates based on them, have sampling errors.

For more information on how state rates are calculated and employment data limitations see the BLS Handbook of Methods:

<https://www.bls.gov/opub/hom/cfoi/calculation.htm>.

For more information on CPS and LAUS see their sections in the BLS Handbook of Methods: <https://www.bls.gov/opub/hom/cps/home.htm> and

<https://www.bls.gov/opub/hom/la/home.htm>.

Last Modified Date: December 16, 2022

Appendix G

Federal OSHA Register Posting Withdrawal



facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

* * * * *

[FR Doc. 2023-02731 Filed 2-14-23; 8:45 am]

BILLING CODE 4191-02-P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142-AA22

Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking; extension of responsive comment period.

SUMMARY: The National Labor Relations Board (the Board) published a Notice of Proposed Rulemaking in the *Federal Register* on November 4, 2022, seeking comments from the public regarding its proposed rule concerning Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships (“NPRM”). The deadline for initial comments was extended on December 1, 2022, to February 2, 2023, with responsive comments due on February 16, 2023. The date to submit responsive comments to the initial comments is being extended due to an administrative error that occurred within *Regulations.gov* that inadvertently allowed six comments to be filed on a closed NLRB rulemaking docket from 2018. These comments have been moved to the correct NPRM docket.

DATES: The responsive comment period for the proposed rule published November 4, 2022, at 87 FR 66890, extended December 1, 2022, at 87 FR 73705, is further extended. Responsive comments to initial comments must be received by the Board on or before March 1, 2023.

ADDRESSES:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through <http://www.regulations.gov>. Follow the instructions for submitting comments.

Delivery—Comments may be submitted by mail or hand delivery to: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. Because of security

precautions, the Board continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments. The Board encourages electronic filing. It is not necessary to send comments if they have been filed electronically with *regulations.gov*. If you send comments, the Board recommends that you confirm receipt of your delivered comments by contacting (202) 273-1940 (this is not a toll-free number). Individuals with hearing impairments may call 1-866-315-6572 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, (202) 273-1940 (this is not a toll-free number), 1-866-315-6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Board sought comments from the public regarding its November 4, 2022, NPRM. Pursuant to an extension published on December 1, 2022, initial comments were due on February 2, 2023, and responsive comments were due on February 16, 2023. The Board is extending the responsive comment deadline due to an administrative error that occurred within *Regulations.gov* that inadvertently allowed six comments to be filed on a closed NLRB rulemaking docket from 2018. These comments have been moved to the correct NPRM docket. The new due date for submission of responsive comments is March 1, 2023.

Only comments submitted through <http://www.regulations.gov>, hand delivered, or mailed will be accepted; ex parte communications received by the Board will be made part of the rulemaking record and will be treated as comments only insofar as appropriate. Comments will be available for public inspection at <http://www.regulations.gov> and during normal business hours (8:30 a.m. to 5 p.m. EST) at the above address.

The Board will post, as soon as practicable, all comments received on <http://www.regulations.gov> without making any changes to the comments, including any personal information provided. The website <http://www.regulations.gov> is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. The Board requests that comments include full citations or internet links to any authority relied upon. The Board cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers,

and email addresses in their comments, as such submitted information will become viewable by the public via the <http://www.regulations.gov> website. It is the commenter's responsibility to safeguard his or her information. Comments submitted through <http://www.regulations.gov> will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

Dated: February 10, 2023.

Roxanne L. Rothschild,
Executive Secretary.

[FR Doc. 2023-03215 Filed 2-14-23; 8:45 am]

BILLING CODE 7545-01-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. OSHA-2021-0012]

RIN 1218-AD43

Arizona State Plan for Occupational Safety and Health; Proposed Reconsideration and Revocation; Withdrawal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Reconsideration of final approval of State Plan; withdrawal.

SUMMARY: OSHA is withdrawing its proposed reconsideration of the Arizona State Plan's final approval status.

DATES: The proposed rule published on April 21, 2022, at 87 FR 23783, is withdrawn effective February 15, 2023.

ADDRESSES: *Docket:* To read or download comments and materials submitted in response to OSHA's revocation proposal, go to Docket No. OSHA-2021-0012 at www.regulations.gov. All comments and submissions are listed in the www.regulations.gov index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and submissions are available for inspection and, where permissible, copying at the OSHA Docket Office, U.S. Department of Labor; telephone: (202) 693-2350 (TTY number: (877) 889-5627). Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. For

example, the full Document ID number for the comment submitted by the Industrial Commission of Arizona (ICA) and the Arizona Division of Occupational Safety and Health (ADOSH), which is discussed in more detail below, is Document ID OSHA–2021–0012–0228. OSHA will identify this comment, and other comments in the rulemaking, by the term “Document ID” followed by the comment’s unique four-digit code.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Francis Meilinger, OSHA Office of Communications, U.S. Department of Labor, Washington, DC 20210; telephone (202) 693–1999; email: meilinger.francis2@dol.gov.

For general and technical information: Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, U.S. Department of Labor, Washington, DC 20210; telephone: (202) 693–2200; email: kalinowski.doug@dol.gov.

SUPPLEMENTARY INFORMATION: On April 21, 2022, OSHA published a **Federal Register** notice proposing reconsideration and revocation of OSHA’s final approval of the Arizona State Plan for Occupational Safety and Health pursuant to 29 CFR 1902.32(f), 9 CFR 1902.44(b), and 29 CFR 1902.47–.48 due to fundamental deficiencies in the Arizona State Plan (87 FR 23783) (revocation proposal). The concerns prompting the notice, discussed at length in OSHA’s revocation proposal, included Arizona’s failure to adopt adequate maximum penalty levels, occupational safety and health standards, National Emphasis Programs and, most recently, the COVID–19 Healthcare Emergency Temporary Standard (ETS) (87 FR 23785–87). Consequently, OSHA proposed reconsideration and revocation of Arizona’s 18(e) final approval determination until OSHA received satisfactory assurances that these fundamental deficiencies had been addressed and that Arizona remains committed to implementing a program for employee safety and health protection that meets the requirements of section 18(c) of the OSH Act.

Comments on OSHA’s revocation proposal were initially due on May 26, 2022, and the notice tentatively scheduled an informal public hearing on the proposal to begin on August 16, 2022. However, OSHA extended the comment period to July 5, 2022 (87 FR 31442) in response to requests from the public. OSHA received 197 comments concerning the proposal during this initial comment period.

On July 5, 2022, the ICA and its subagency, the Arizona Division of Occupational Safety and Health (ADOSH) submitted a comment on the revocation proposal to advise OSHA that Arizona had completed several measures to address the concerns that OSHA identified (see Document ID 0228).

In response to this comment, on August 15, 2022, OSHA published a **Federal Register** notice that reopened the comment period on the revocation proposal to allow stakeholders further opportunity to comment on the proposed revocation in light of Arizona’s efforts and postponed the informal public hearing (87 FR 50025). That extended comment period closed on October 14, 2022. OSHA received 28 additional comments during this extended comment period.

Arizona completed the following actions that address OSHA’s concerns: adopted three outstanding final rules (Standards Improvement Project Phase-IV (“SIP–IV”), Beryllium in Construction and Shipyards, and Cranes and Derricks in Construction: Railroad Roadway Work); adopted an increase to its minimum penalties for serious and non-serious violations to match OSHA minimum penalty levels; passed a state law to ensure that Arizona’s future maximum and minimum penalty levels will track OSHA’s annual penalty level adjustments; passed a state law to authorize adoption of an ETS when either the ICA or OSHA deems the grave danger criteria met; and adopted the recordkeeping and COVID–19 log requirements in OSHA’s COVID–19 Healthcare ETS as a permanent standard.

Additionally, in their comment on the revocation proposal, the ICA and ADOSH clarified that Arizona had adopted two National Emphasis Programs (NEPs) that OSHA had identified as not yet adopted by the State Plan, the NEP on Amputations in Manufacturing Industries, CPL 03–00–022 (adoption due June 10, 2020), and the NEP on Respirable Crystalline Silica, CPL 03–00–023 (adoption due August 4, 2020), and responded to OSHA’s concerns regarding Arizona’s failure to provide OSHA with the required documentation of adoption of the National Emphasis Program on Trenching and Excavation, as required by statute and regulations (Document ID 0228). OSHA now has the required documentation of Arizona’s adoption of these measures. Finally, Arizona asserted that it had updated its State Plan Application (“SPA”) portal entries to accurately reflect adoption dates for

NEPs and final rules (Document ID 0228).

Based on the foregoing, OSHA is withdrawing its proposal to reconsider the Arizona State Plan’s final approval status.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20001 authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor’s Order No. 8–2020 (85 FR 58393 (Sept. 18, 2020)), and 29 CFR parts 1902, 1952, 1953, 1954, and 1955.

Signed at Washington, DC.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–03183 Filed 2–14–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 550

[Docket No.: BOEM–2023–0012]

RIN 1010–AE11

Protection of Marine Archaeological Resources

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: BOEM proposes to require lessees and operators to submit an archaeological report with any oil and gas exploration or development plan they submit to BOEM for approval of activities proposed on the Outer Continental Shelf (OCS). An archaeological report is currently required only if the plan covers an area that a BOEM Regional Director has reason to believe may contain an archaeological resource. This proposed rule would increase the likelihood that archaeological resources are located and identified before they are inadvertently damaged by an OCS operator, thereby assuring compliance with section 106 of the National Historic Preservation Act (NHPA). This proposed rule would define the minimum level of survey information necessary to support the conclusions in the archaeological report, the procedure for reporting possible

Appendix H

Commissioner Per Diem Reimbursement



THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR



COMMISSIONER PER DIEM REIMBURSEMENT

Name of Member _____ EIN _____

Date of Meeting _____ Amount \$50.00

Meeting Preparation Functions Performed

Date of Preparation _____

Reviewed or Prepared (check all that apply):

- Previous Meeting Minutes
- Penalties for Lack of Workers' Comp Coverage
- Request for Renewal of Self-Insurance Authority
- ADOSH Proposed Citations and Penalties
- Whistleblower Discrimination Files
- Questions Regarding the OSHA State Plan
- Other (please describe)
- Materials related to Agency Division Functions
- Content to share with fellow Commissioners
- Rulemaking Proposals
- Assessment Rate Proposals
- Minimum Wage Rate Reports
- Penalties for Youth Employment Law Violations

Amount \$50.00

Total \$100.00

Member Signature _____

Date _____

Director Signature _____

Date _____