INTERPRETATION OF "HOURS WORKED" FOR PURPOSES OF THE ARIZONA MINIMUM WAGE ACT

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

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Substantive Policy Statement Regarding Interpretation of "Hours Worked" For Purposes of the Arizona Minimum Wage Act[1]

The Industrial Commission of Arizona is given the authority to enforce and implement the "Raise the Arizona Minimum Wage for Working Arizonans Act". A.R.S. § 23-364(A). For purposes of enforcement and implementation of this Act, in interpreting and determining "hours worked" under this Act, and where consistent with A.A.C. R20-5-1201 et seq. (Arizona Minimum Wage Act Practice and Procedure), the Industrial Commission of Arizona will be guided by and rely upon 29 CFR Part 785 – Hours Worked Under the Fair Labor Standards Act of 1938, which includes the following subparts of 29 CFR 785:

29 CFR § 785.21:

> An employee who is required to be on duty for less than 24 hours is working even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator, for example, who is required to be on duty for specified hours is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is worktime.

29 CFR § 785.22:

> (a) General. Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8

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> hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If sleeping period is of more than 8 hours, only 8 hours will be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked.
> (b) Interruptions of sleep. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted. For enforcement purposes, the Divisions have adopted the rule that if the employee cannot get at least 5 hours' sleep during the scheduled period the entire time is working time.

29 CFR § 785.23:

> An employee who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted. This rule would apply, for example, to the pumper of a stripper well who resides on the premises of his employer and also to a telephone operator who has the switchboard in her own home.

This substantive policy statement is limited to the Commission's interpretation of "hours worked" and is intended to qualify as an interpretation under A.R.S. § 23-365. As a substantive policy statement, the Commission's interpretation is advisory only and has no application to, nor is it intended to affect or change, the policies, rules, and statutes enforced by other state or federal agencies that apply to employees under those respective policies, rules, and statutes, including the FLSA.