

## ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK TIME PRACTICE AND PROCEDURE

### R20-5-1201. Notice of Rules

- A. This Article applies to all actions and proceedings before the Industrial Commission of Arizona arising under A.R.S. Title 23, Articles 8 and 8.1.
- B. The Industrial Commission of Arizona shall provide a copy of this Article upon request to any person free of charge.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

### R20-5-1202. Definitions

In this Article, the definitions of A.R.S. §§ 23-362 (version two), 23-371, and 23-364 apply. In addition, unless the context otherwise requires, the following definitions shall apply to both the Act and this Article:

1. "Act" means A.R.S. Title 23, Chapter 2, Articles 8 and 8.1.
2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. "Amount of earned paid sick time available to the employee" means the amount of earned paid sick time or equivalent paid time off that is available to the employee for use in the current year.
4. "Amount of earned paid sick time taken by the employee to date in the year" means the amount of earned paid sick time or equivalent paid time off taken by the employee to

date in the current year. Where an employee has used available equivalent paid time off for either the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that usage towards the "amount of earned paid sick time taken by the employee to date in the year."

5. "Amount of pay the employee has received as earned paid sick time" means the amount of pay the employee has received as earned paid sick time or equivalent paid time off to date in the current year. Where an employee has received pay for equivalent paid time off for the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that pay towards the "amount of pay the employee has received as earned paid sick time."
6. "Authorized representative" means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person's authority to act on behalf of the party.
7. "Casual Basis," when applied to babysitting services, means employment which is irregular or intermittent.
8. "Commission" means monetary compensation based on:
  - a. A percentage of total sales,
  - b. A percentage of sales in excess of a specified amount,
  - c. A fixed allowance per unit, or
  - d. Some other formula the employer and employee agree to as a measure of accomplishment.
9. "Communicable disease" has the meaning prescribed by A.R.S. § 36-661.
10. "Complainant" means a person or organization filing an administrative complaint under the Act.
11. "Department" means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
12. "Earned sick time" under A.R.S. § 23-364(G) means earned paid sick time.
13. "Employee's regular paycheck" means a regular payroll record that is readily available to employees and contains the information required by A.R.S. § 23-375(C), including physical or electronic paychecks or paystubs.
14. "Equivalent paid time off" means paid time off provided under a paid leave policy, such as a paid time off policy, that makes available an amount of paid leave sufficient to meet the accrual requirements of the Act that may be used for the same purposes and under the same conditions as earned paid sick time.
15. "Filing" means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.
16. The term "health care professional" in A.R.S. § 23-373(G) has the same meaning as "health care professional," as defined in this Section.
17. "Health care professional" means any of the following:
  - a. A "physician" as defined by A.R.S. § 36-2351;
  - b. A "physician assistant" as defined by A.R.S. § 32-2501;
  - c. A "registered nurse practitioner" as defined by A.R.S. § 32-1601.
  - d. A certified nurse midwife who is a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period;
  - e. A dentist licensed under A.R.S. Title 32, Chapter 11, Article 2; or
  - f. A behavioral health provider practicing as:

## Industrial Commission of Arizona

- i. A psychologist licensed under A.R.S. Title 32, Chapter 19.1;
  - ii. A clinical social worker licensed under A.R.S. § 32- 3293;
  - iii. A marriage and family therapist licensed under A.R.S. § 32-3311; or
  - iv. A professional counselor licensed under A.R.S. § 32- 3301.
18. "Health care provider" has the meaning prescribed by A.R.S. § 36-661.
  19. "Hours worked" means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.
  20. "Minimum wage" means the lowest rate of monetary compensation required under the Act.
  21. "Monetary compensation" means cash or its equivalent due to an employee by reason of employment.
  22. "On duty" means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee's own purpose.
  23. "Public benefits" has the same meaning as "state or local public benefit," as prescribed by A.R.S. § 1-502(I).
  24. "Public health emergency" means a state of emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.
  25. "Same hourly rate" means the following:
    - a. For employees paid on the basis of a single hourly rate, "same hourly rate" shall be the hourly rate the employee would have earned for the period of time in which earned paid sick time or equivalent paid time off is used, but shall in no case be less than minimum wage.
    - b. For employees who are paid multiple hourly rates of pay, "same hourly rate" shall be determined in the following order of priority, but shall in no case be less than minimum wage:
      - i. The hourly rate the employee would have earned, if known, for each hour of earned paid sick time or equivalent paid time off used.
      - ii. The weighted average of all hourly rates of pay during the previous pay period.
    - c. For employees who are paid a salary, no additional pay is due when the employee's use of earned paid sick time or equivalent paid time off results in no reduction in the employee's regular salary during the pay period in which the earned paid sick time or equivalent paid time off is used. "Same hourly rate" for salaried employees shall be determined in the following order of priority, but shall in no case be less than minimum wage:
      - i. The wages an employee earns during each pay period covered by the salary divided by the number of hours agreed to be worked during each pay period, if the number of hours to be worked during each pay period was previously established.
      - ii. The wages an employee earns during each workweek covered by the salary in the current year divided by 40 hours.
- d. For employees paid on a commission, piece-rate, or fee-for-service basis, "same hourly rate" shall be determined in the following order of priority, but shall in no case be less than minimum wage:
    - i. The hourly rate of pay previously agreed upon by the employer and the employee as: (1) a minimum hourly rate for work performed; or (2) an hourly rate for payment of earned paid sick time or equivalent paid time off.
    - ii. The wages that the employee would have been paid, if known, for the period of time in which earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.
    - iii. A reasonable estimation of the commission, piece-rate, or fee-for-service compensation that the employee would have been paid for the period of time in which the earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.
    - iv. The hourly average of all commission, piece-rate, or fee-for-service compensation that the employee earned during the previous 90 days, if the employee worked regularly during the previous 90-day period, based on: (1) hours that the employee actually worked; or (2) a 40-hour workweek.
    - v. The hourly average of all commission, piece-rate, or fee-for-service compensation that the employee earned during the previous 365 days, based on: (1) hours that the employee actually worked; or (2) a 40-hour workweek.
  - e. "Same hourly rate" includes shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) if the employee would have been entitled to the shift differential or premium for the period of time in which earned paid sick time or equivalent paid time off is used.
  - f. "Same hourly rate" does not include:
    - i. Additions to an employee's base rate for over-time or holiday pay;
    - ii. Subject to subsection (e), bonuses or other types of incentive pay; and
    - iii. Tips or gifts.
26. "Smallest increment that the employer's payroll system uses to account for absences or use of other time" means the smallest increment of time that an employer utilizes, by policy or practice, to account for absences or use of other paid time off.
  27. "Tip" means a sum that a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, such as event tickets, passes, or merchandise, are not tips.
  28. "Violation" means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.

29. "Willfully" means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.
30. "Workday" means any fixed period of 24 consecutive hours.
31. "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

**R20-5-1203. Duty to Provide Current Address**

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

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

**R20-5-1204. Forms Prescribed by the Department**

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

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

**R20-5-1205. Determination of Employment Relationship**

- A. Determination of an employment relationship under the Act, which includes whether an individual is an independent contractor, shall be based upon the economic realities of the relationship. Consideration of whether an individual is economically dependent on the employer for which the individual performs work shall be determined by factors showing dependence, which non-exclusive factors shall include those factors identified in A.R.S. §§ 23-902(D) and 23-1601(B).
- B. An individual who works for another person without any express or implied compensation agreement is not an employee under the Act. This may include an individual that volunteers to work for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those which the individual proposes to volunteer.
- C. An individual who works for another individual as a babysitter on a casual basis and whose vocation is not babysitting, is not

an employee under the Act even if the individual performs other household work not related to caring for the children, provided the household work does not exceed 20% of the total hours worked on the particular babysitting assignment.

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

**R20-5-1206. Payment of Minimum Wage; Commissions; Tips; Front Loading Earned Paid Sick Time; Limitation on Carry Over of Unused Earned Paid Sick Time**

- A. Subject to the requirements of the Act and this Article, no less than the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis.
- B. If the combined wages of an employee are less than the applicable minimum wage for a work week, the employer shall pay monetary compensation already earned, and no less than the difference between the amounts earned and the minimum wage as required under the Act.
- C. The workweek is the basis for determining an employee's hourly wage. Upon hire, an employer shall advise the employee of the employee's designated workweek. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the Act.
- D. In computing the minimum wage, an employer shall consider only monetary compensation and shall count tips and commissions in the workweek in which the tip or commission is earned.
- E. An employer is allowed to:
1. Require or permit employees to pool, share, or split tips; and
  2. Require an employee to report tips to the employer in order to meet reporting requirements of this Article and federal law.
- F. An employer who hires an employee after the beginning of the employer's year is not required to provide additional earned paid sick time or equivalent paid time off during that year if the employer provides the employee for immediate use on the employee's ninetieth calendar day after commencing employment an amount of earned paid sick time or equivalent paid time off that meets or exceeds the employer's reasonable projection of the amount of earned paid sick time or equivalent paid time off that the employee would have accrued from the date of hire through the end of the employer's year at a rate of one hour for every 30 hours worked. If the amount of earned paid sick time or equivalent paid time off provided is less than the employee would have accrued based on hours actually worked during the employer's year, the employer shall immediately provide an amount of earned paid sick time or equivalent paid time off that reflects the difference between the employer's projection and the amount of earned paid sick time or equivalent paid time off that the employee would have accrued for hours actually worked in the year.
- G. Subject to subsection (F), an employer with 15 or more employees that provides its employees for immediate use at the beginning of each year 40 or more hours of earned paid sick time or 40 or more hours of equivalent paid time off is not required to provide carryover or additional accrual.

- H. Subject to subsection (F), an employer with fewer than 15 employees that provides its employees for immediate use at the beginning of each year 24 or more hours of earned paid sick time or 24 or more hours of equivalent paid time off is not required to provide carryover or additional accrual.
- I. Unless an employer: (1) elects to pay an employee for unused earned paid sick time or equivalent paid time off at the end of a year pursuant to A.R.S. § 23-372(D)(4); or (2) meets the requirements of subsections (G) or (H), unused earned paid sick time and equivalent paid time off may be carried over to the next year, as follows:
1. Subject to an employer's entitlement to permit greater carry over, an employee of an employer with 15 or more employees may carry over to the following year up to 40 hours of unused earned paid sick time or equivalent paid time off.
  2. Subject to an employer's entitlement to permit greater carry over, an employee of an employer with fewer than 15 employees may carryover to the following year up to 24 hours of unused earned paid sick time or equivalent paid time off.
  3. Carry over shall not affect accrual, usage rights, or usage limits under the Act.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

#### R20-5-1207. Tip Credit Toward Minimum Wage

- A. In this Section, unless the context otherwise requires, "customarily and regularly" means receiving tips on a consistent and recurrent basis, the frequency of which may be greater than occasional, but less than constant, and includes the occupations of waiter, waitress, bellhop, busboy, car wash attendant, hairdresser, barber, valet, and service bartender.
- B. For purposes of calculating the permissible credit for tips under A.R.S. § 23-363(C), the following applies:
1. Tips are customarily and regularly received in the occupation in which the employee is engaged;
  2. Except as provided in R20-5-1206(E), the employee actually receives the tip free of employer control as to how the employee uses the tip and the tip becomes the employee's property;
  3. Employees who customarily and regularly receive tips may pool, share, or split tips between them, and the amount each employee actually retains is considered the tip of the employee who retains it;
  4. Employer-required sharing of tips with employees who do not customarily and regularly receive tips in the occupation in which the employee is engaged, including management or food preparers, are not credited toward that employee's minimum wage; and
  5. A compulsory charge for service imposed on a customer by an employer's establishment are not credited toward an employee's minimum wage unless the employer actually distributes the charge to the employee in the pay period in which the charge is earned.
- C. Upon hiring or assigning an individual to a position that customarily and regularly receives tips, an employer intending to exercise a tip credit shall provide written notice to the employee prior to exercising the tip credit. Thereafter, the

employer shall notify the employee in writing each pay period of the amount per hour that the employer takes as a tip credit.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

#### R20-5-1208. Posting Requirements; Small Employer Exemption

- A. With the exception of small employers, every employer subject to the Act shall place the posters prescribed by the Department informing employees of their rights under the Act in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily placed. The employer shall ensure that the notices are not removed, altered, defaced, or covered by other material.
- B. In this Section, unless context otherwise requires, "small employer" means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

#### R20-5-1209. Records Availability

- A. Each employer shall keep the records required under the Act and this Article safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where the records are customarily maintained. When the employer maintains the records at a central recordkeeping office other than in the place or places of employment, the employer shall make the records available to the Department within 72 hours following notice from the Department.
- B. Employers shall make available to the Department any equipment or technology that is necessary to facilitate inspection and copying of the records.
- C. Each employer required to maintain records under the Act shall make enlargement, recomputation, or transcription of the records and shall submit to the Department the records or reports in a readable format upon the Department's written request.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

#### R20-5-1210. General Recordkeeping Requirements

- A. Payroll records required to be kept under the Act include:
1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily,

## Industrial Commission of Arizona

- weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part: (1) those employees' pay period wages; and (2) those employees' earned paid sick time or equivalent paid time off;
2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
  3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.
- B.** Subject to A.R.S. § 23-381 and except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:
1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
  2. Home address, including zip code;
  3. Date of birth, if under 19;
  4. Occupation in which employed;
  5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;
  6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, including the amount and nature of each payment;
  7. Hours worked each workday and total hours worked each workweek;
  8. Total daily or weekly straight-time wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
  9. Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;
  10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;
  11. Total wages paid each pay period;
  12. Date of payment and the pay period covered by payment;
  13. The amount of earned paid sick time available to the employee;
  14. The amount of earned paid sick time taken by the employee to date in the year;
  15. The amount of pay the employee has received as earned paid sick time; and
  16. The employee's earned paid sick time balance. "The employee's earned paid sick time balance" means the sum of earned paid sick time or equivalent paid time off that is: (1) carried over to the current year; (2) accrued to date in the current year; and (3) provided to date in the current year pursuant to A.R.S. § 23-372(D)(4) or A.A.C. R20-5-1206(F), (G), or (H).
- C.** For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:
1. Records containing the information and data required under subsections (B)(1) through (B)(5), and (B)(11) through (B)(16) of this Section; and
  2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.
- D.** With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:
1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and
  2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.
- E.** With respect to an employee who customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:
1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;
  2. Amount of tips the employee reports to the employer;
  3. The hourly wage of each tipped employee after taking into consideration the employee's tips;
  4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;
  5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and
  6. Copy of the notice required under R20-5-1207(C).
- F.** An employer who makes retroactive payment of wages, voluntarily or involuntarily, shall record on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.

**Historical Note**

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**R20-5-1211. Administrative Complaints**

- A.** A person or organization alleging a minimum wage, earned paid sick time, or equivalent paid time off violation shall file a complaint with the Labor Department within one year from the date the wages, earned paid sick time, or equivalent paid time off were due.
- B.** A person or organization alleging retaliation, discrimination, or a violation of A.R.S. § 23-377 shall file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.

- C. The person or organization filing a complaint with the Labor Department shall sign the complaint.
- D. Any person or organization other than an affected employee who files a complaint shall include the names of affected employees.
- E. Upon its own complaint, the Department may investigate violations under the Act.

#### Historical Note

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#### R20-5-1212. Conduct that Hinders Investigation

An employer hinders an investigation under the Act if the employer engages in conduct, or causes another person to engage in conduct, that delays or otherwise interferes with the Department's investigation, including:

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

#### Historical Note

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

- A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the Act, the Department shall issue a Findings and Order of its determination. The Department shall send its Findings and Order to both the employer and the complainant at their last known addresses served personally or by regular first class mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees.
- B. If the Department determines that an employer has violated the minimum wage, earned paid sick time, or equivalent paid time off requirements, the Department shall order the employer to pay the employee, and if applicable, affected employees, the balance of the wages, earned paid sick time, or equivalent paid time off owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages, earned paid sick time, or equivalent paid time off owed.
- C. If the Department determines that a retaliation, discrimination, confidentiality, or nondisclosure violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, including:
  1. Rehiring or reinstatement,
  2. Reimbursement of lost wages and interest,
  3. Payment of penalty to employees or affected employees as provided for in the Act and this Article, and

4. Posting of notices to employees.

- D. If the Department determines that no violation of the Act has occurred the Department shall notify the parties and shall dismiss the complaint without prejudice. After notification of the Department's determination, the complainant may bring a civil action under A.R.S. § 23-364(E).
- E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or the civil penalties and other violations may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall serve, personally or by regular first class mail, the Findings and Order on the employer and, if a complaint has been filed, the complainant.
- F. The Director of the Department shall sign the written Findings and Order issued by the Department.
- G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

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

- A. Except as provided in R20-5-1213(D), a party aggrieved by a Findings and Order issued by the Department may request a hearing by filing a written request for hearing with the Department within 30 days after the Findings and Order is served upon the party. Failure to timely file a request for hearing means that the Findings and Order issued by the Department is final and res judicata to all parties.
- B. A request for hearing shall be in writing and contain:
  1. The name and address of the party requesting the hearing,
  2. The signature of the party or the party's authorized representative, and
  3. A statement that a hearing is requested.
- C. Upon receipt of a timely filed request for hearing, the Department shall refer the matter to the Administrative Law Judge Division of the Commission for hearing.
- D. Except as otherwise provided in this Section, the hearing shall be conducted under A.R.S. § 41-1061 et seq.
- E. A person submitting correspondence or other documents, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence or other document upon all other parties, or if represented, the parties' authorized representative.
- F. The administrative law judge may dismiss a request for hearing when it appears to the judge's satisfaction that the parties have resolved the disputed issue or issues.
- G. The administrative law judge shall issue a written decision upon hearing containing findings of fact and conclusions of law no later than 30 days after the matter is submitted for decision. The decision shall be sent to the parties at their last known addresses served personally or by regular first class mail.
- H. A decision issued under this Section is final when entered unless a party files a request for rehearing or review as pro-

vided in R20-5-1215 or commences an action in the Superior Court as provided in R20-5-1216 and A.R.S. § 12-901 et seq. The decision shall contain a statement explaining the review rights of a party.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

- A. A party may request rehearing or review of a decision issued under R20-5-1214 by filing with the Administrative Law Judge a written request for rehearing or review no later than 15 days after the written decision is served personally or by regular first class mail upon the parties.
- B. A request for rehearing or review shall be based upon any of the following causes that materially affected the rights of an aggrieved party:
  1. Irregularities in the hearing proceeding or any order, or abuse of discretion that deprives a party seeking review of a fair hearing;
  2. Accident or surprise that could not have been prevented by ordinary prudence;
  3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
  4. Error in the admission or rejection of evidence, or errors of law occurring at the hearing;
  5. Bias or prejudice of the Department or administrative law judge; and
  6. The findings of fact or conclusions of law contained in the decision are not justified by the evidence or are contrary to law.
- C. A request for rehearing or review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D. A party shall have 15 days from the date of the filing of a request for rehearing or review to file a written response. Failure to respond shall not be deemed an admission against interest.
- E. The administrative law judge shall issue a decision upon review no later than 30 days after receiving a request for review or response, if one is filed.
- F. A decision upon review is final unless a party seeks judicial review as provided in R20-5-1216.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

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

- B. A decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 is final unless a party seeks judicial review as provided under A.R.S. § 12-901 et seq.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

The Department may assess civil penalties for violations of the Act and this Article, including the assessment of civil penalties for engaging in conduct that hinders an investigation of the Department as specified in R20-5-1212.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

#### R20-5-1218. Collection of Wages, Earned Paid Sick Time, Equivalent Paid Time Off, or Penalty Payments Owed

- A. Upon determination that wages, earned paid sick time, equivalent paid time off, or penalty payments are due and unpaid to any employee, the employee may, or the Department may on behalf of an employee, obtain judgment and execution, garnishment, attachment, or other available remedies for collection of unpaid wages and penalty payments established by a final Findings and Order of the Department.
- B. If payment cannot be made to the employee, the Department shall receive monetary compensation or penalty payments on behalf of the employee and transmit monies it receives as payment in a special state fund as provided in A.R.S. § 23-356(C).
- C. The Department may amend a Findings and Order to conform to the legal name of the business or the person who is the defendant employer to a complaint under the Act, provided service of the Findings and Order was made on the defendant or the defendant's agent. If a judgment has been entered on the order, the Department may apply to the clerk of the superior court to amend a judgment that has been issued under a final order, provided service was made on the defendant or the defendant's agent.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

#### R20-5-1219. Resolution of Disputes

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

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785,

effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

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

- A. In this Section, unless context otherwise requires, “small employer” means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.
- B. A small employer, or any category of small employer that is unreasonably burdened by the recordkeeping requirements of the Act and this Article may file a written petition for exception with the Department requesting relief from certain recordkeeping requirements under this Article. The petition shall:
  - 1. State the reasons for the request for relief;
  - 2. State an alternate manner or method of making, keeping, and preserving records that will enable the Department to determine hours worked and wages paid; and
  - 3. Include the signature of the employer or an authorized representative of the employer.
- C. Subject to any conditions or limitations necessary to ensure fulfillment of the purpose and intent of Act, the Department may grant a petition for exception if it finds that:
  - 1. The small employer, or category of small employer is unreasonably burdened by the recordkeeping requirements of the Act and this Article; and
  - 2. The relief requested and alternative proposed will not hinder the Department’s enforcement of the Act and this Article.
- D. For good cause, the Department may rescind a prior order granting relief under this Section.
- E. Relief under this Section is effective upon the Department’s written authorization.