

# THE INDUSTRIAL COMMISSION OF ARIZONA



## ARIZONA REVISED STATUTES § 23-941.01: FULL AND FINAL SETTLEMENTS

### INFORMATION AND SUGGESTED BEST PRACTICES

#### FILING PRACTICES

1. Petitions for Approval of Full and Final Settlements under A.R.S. § 23-941.01 should be filed either in person or by mail with the Administrative Law Judge Division of the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, AZ 85007, Attention: Chief Administrative Law Judge.
2. A Petition for Approval of Full and Final Settlement should attach the fully-executed Full and Final Settlement Agreement and all supporting documentation.
3. Full and Final Settlement Agreements should be in writing. *See* A.R.S. § 23-941.01(B)(1).
4. A Full and Final Settlement Agreement should be “signed by the carrier, special fund or self-insured employer and the employee or the employee’s authorized representative.” *See* A.R.S. § 23-941.01(B)(2). **Note:** Because A.R.S. § 23-941.01(B)(2) is unclear about who is authorized to sign a Full and Final Settlement Agreement on behalf of a carrier/Special Fund/self-insured employer, a Full and Final Settlement Agreement should be signed by **both** legal counsel for the carrier/Special Fund/self-insured employer **and** an authorized employee representative of the carrier/Special Fund/self-insured employer.
5. A Full and Final Settlement Agreement should include a detailed description of the employee’s medical conditions that have been identified and contemplated at the time of the Full and Final Settlement Agreement. *See* A.R.S. § 23-941.01(B)(4).
6. The Full and Final Settlement Agreement should include attestations that ***the injured worker:***
  - A. Has read the Full and Final Settlement Agreement and understands the rights settled and released by the Full and Final Settlement Agreement. *See* A.R.S. § 23-941.01(C)(1). **Note:** This attestation should include a statement about the injured worker’s understanding of the specific rights being settled and released by the Full and Final Settlement Agreement, including the right to rearrange permanent disability compensation benefits pursuant to A.R.S. § 23-1044(F) and the right to reopen the claim pursuant to A.R.S. § 23-1061(H).
  - B. Had the opportunity to seek legal advice and be represented by counsel. *See* A.R.S. § 23-941.01(B)(3), (C)(1).

- C. Is represented by counsel (applicable only to injured workers who are represented by counsel). *See* A.R.S. § 23-941.01(C)(1).
  - D. Knowingly declined the opportunity to seek legal advice or be represented by counsel (applicable only to injured workers who have declined to seek legal advice or be represented by counsel).
  - E. Understands that monies received for future medical treatment associated with an industrial injury should be set aside to ensure that the costs of such treatment will be paid. *See* A.R.S. § 23-941.01(C)(3). **Note:** This attestation should include a statement about the injured worker's understanding of the need to set aside monies for future medical treatment *and* a detailed statement explaining *how* the injured worker plans to set aside monies for future medical treatment.
7. The Full and Final Settlement Agreement should include the following attestations by *all parties*:
- A. No coercion, duress, fraud, misrepresentations, or undisclosed additional agreements have been used to achieve the Full and Final Settlement Agreement.
  - B. The Full and Final Settlement Agreement settles a compensable claim. *See* A.R.S. § 23-941.01(J).
  - C. The Full and Final Settlement Agreement settles a claim in which the carrier, Special Fund, or self-insured employer has terminated the period of disability. **Note:** Parties should attach documentation to a Petition for Approval of Full and Final Settlement that establishes claim closure. *See* A.R.S. § 23-941.01(A)(2).
  - D. The Full and Final Settlement Agreement does not include settlement of a claim that resulted in total and permanent disability pursuant to A.R.S. § 23-1045(C) & (D). *See* A.R.S. § 23-941.01(H).
  - E. The Full and Final Settlement Agreement does not include settlement of claims unrelated to the claim for compensation, benefits, penalties, and interest. *See* A.R.S. § 23-941.01(I).
  - F. The carrier, Special Fund, or self-insured employer has provided the injured worker information that outlines all reasonable anticipated future medical, surgical, and hospital benefits related to the claim and the projected cost of those benefits, and which includes an explanation of how those projected costs were determined. *See* A.R.S. § 23-941.01(C)(2). **Note:** Parties should submit copies of *all* information that the carrier, Special Fund, or self-insured employer provided to the injured worker pursuant to A.R.S. § 23-941.01(C)(2) as an attachment to the Petition for Approval of Full and Final Settlement.

G. The parties have considered and taken reasonable steps to protect the interests of Medicare, Medicaid, the Indian Health Service, and the United States Department of Veterans Affairs, including establishing a Medicare savings account or a Workers' Compensation Medicare Set-Aside Agreement ("WCMSA"), if appropriate. See A.R.S. § 23-941.01(C)(4). **Note:** This attestation should include a detailed discussion of all steps taken by the parties to protect the interests of Medicare, Medicaid, the Indian Health Service, and the United States Department of Veterans Affairs. For more information about the WCMSA requirement, see

<https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSA-Overview.html>

[https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/Downloads/WCMSA-Reference-Guide-Version-2\\_6.pdf](https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/Downloads/WCMSA-Reference-Guide-Version-2_6.pdf)

H. The parties have conducted a search for and taken reasonable steps to satisfy any identified medical liens. See A.R.S. § 23-941.01(C)(5). **Note:** This attestation should include a detailed discussion of all steps taken by the parties to search for medical liens and all steps taken by the parties to satisfy applicable medical liens.

### **ADMINISTRATIVE LAW JUDGE REVIEW**

1. An Administrative Law Judge will review a Petition for Approval of a Full and Final Settlement and may require further documentation or hold a hearing to gather further information from the parties. In cases involving an unrepresented injured worker, the Administrative Law Judge will schedule a hearing to gather necessary information from the parties. Parties should promptly comply with requests for further documentation or information.
2. The Administrative Law Judge will approve or reject a Full and Final Settlement Agreement by written findings and award.
3. Any interested party to a rejected Full and Final Settlement Agreement may file a request for review pursuant to A.R.S. §§ 23-942 and 23-943.
4. Appeals of decisions upon review may be made pursuant to A.R.S. § 23-951.

### **"FAIR AND REASONABLE" AND "BEST INTERESTS" STANDARDS**

In order to assist Administrative Law Judges in rendering informed and prompt decisions on Petitions for Approval of Full and Final Settlements and to avoid the potential necessity of referring matters for evidentiary hearings to solicit additional information, parties should submit the following information and documentation on a separate worksheet or as an attachment *at the time of submission* of a Petition for Approval of Full and Final Settlement:

1. Information Specific to the Injured Worker:

- A. Name, date of birth, and current address of the injured worker.
- B. Marital status of the injured worker.
- C. Number and ages of dependents of the injured worker.
- D. Educational background of the injured worker.
- E. Work history of the injured worker.
- F. Current employment status of the injured worker.
- G. If the injured worker is not currently working, statement explaining whether the injured worker is looking for work or unable to work.
- H. Statement explaining whether the injured worker is under obligation to pay court-ordered child support and if the injured worker is current on any court-ordered child support obligation.
- I. Statement concerning the injured worker's primary language. If the injured worker is not fluent in English, provide an explanation of steps taken to ensure that the terms and consequences of the Full and Final Settlement Agreement have been explained to the injured worker and that the injured worker understands the terms and consequences of the Full and Final Settlement Agreement.

2. Information Related to the Industrial Claim:

- A. Date of injury.
- B. Name of the employer on date of injury.
- C. Nature of injuries.
- D. Name(s) and address(es) of the injured worker's treating physicians.
- E. Summary of treatment received and the date of last treatment.
- F. Statement of the injured worker's current medical condition.
- G. Description of the injured worker's medical condition(s) identified and contemplated at the time of the settlement that are related to the industrial injury.
- H. Date of closure of the injured worker's claim and statement of the injured worker's medical condition as of date of closure. **Note:** Parties should submit any relevant awards or notices regarding closure, loss of earning capacity, and supportive care as attachments to a Petition for Approval of Full and Final Settlement.
- I. Average monthly wage (if established). **Note:** Parties should submit any relevant awards or notices regarding average monthly wage as attachments to a Petition for Approval of Full and Final Settlement.

- J. Medical reports which confirm that the injured worker's medical condition has stabilized and medical reports that include information about the permanency of injuries.
  - K. Statement of permanent impairment (if any) and description of affected body parts.
  - L. Statement of residual limitations (if any) as a result of the industrial injury.
  - M. Statement regarding outstanding or unpaid medical bills as a result of the industrial injury.
3. Information Related to the Injured Worker's Income and Expenses:
- A. Itemization of current LEC benefits being paid (if any).
  - B. Itemization of the injured worker's other regular income, its sources, and expected duration.
  - C. Itemization of the injured worker's benefits from other sources (*i.e.*, Social Security Disability).
  - D. Itemization of the injured worker's monthly expenses.
  - E. Itemization of the injured worker's current debt (with applicable interest rates).
  - F. Itemization of other household income, expenses, and debt (other than injured worker's).
  - G. Itemization of monetary assets owned by the injured worker (such as savings accounts, investment accounts, etc.)
4. Information Related to Full & Final Settlement Terms:
- A. Detailed financial analysis of the proposed settlement, with allocations specified for medical, indemnity, and other settlement amounts.
  - B. If applicable, present value calculations for applicable benefits, discount rates utilized, and any other information relevant to the computation of the settlement amount.
  - C. Statement of the injured worker's estimated life expectancy and the source of this determination.
  - D. Itemization of any reasonable anticipated future medical, surgical, and hospital benefits relating to the claim and the projected cost of those benefits; and an explanation of how the projected costs were determined. **Note:** Parties should submit copies of the information that the carrier, Special Fund, or self-insured employer provided to the injured worker pursuant to A.R.S. § 23-941.01(C)(2).

- E. Itemization of attorneys' fees paid or to be paid from the settlement proceeds and whether attorneys' fees will be paid on settlement amounts related to future medical, surgical, or hospital benefits.
  - F. Itemization of any amounts paid or to be paid from settlement proceeds to any recipient other than injured worker.
5. Social Security Disability:

If the injured worker is receiving or anticipates receiving Social Security Disability benefits, the parties should appropriately address a potential lifetime pro-ration of the net settlement proceeds.

6. Apportionment:

Statement regarding whether apportionment under A.R.S. § 23-1065 has been awarded on the claim. **Note:** Unless Special Fund is a party to a Full and Final Settlement, parties settling claims in which apportionment has been granted under A.R.S. § 23-1065 should submit as attachments to a Petition for Approval of Full and Final Settlement any relevant awards or notices regarding apportionment and provide an explanation for why Special Fund is not a party to the Full and Final Settlement.

RESOLUTION OF AUTHORIZATION  
THE INDUSTRIAL COMMISSION OF ARIZONA

**WHEREAS**, Senate Bill 1332 of the Fifty-third Legislature, First Regular Session, amended A.R.S. § 23-941.01 (“Settlement of accepted claims: exception: definitions”) effective October 31, 2017; and

**WHEREAS**, A.R.S. § 23-941.01 establishes a mechanism in Arizona for full and final settlements of workers’ compensation claims and sets forth applicable procedures and standards; and

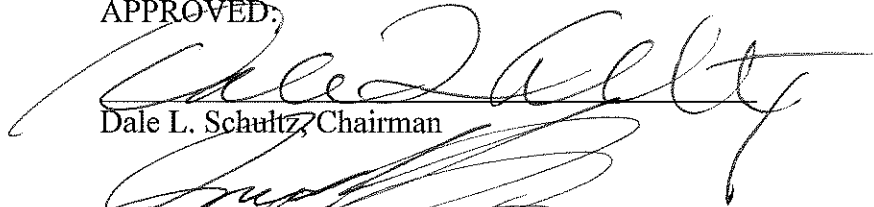
**WHEREAS**, A.R.S. § 23-941.01(E) states that “[a] full and final settlement is not valid and enforceable unless the full and final settlement is approved by the commission”; and

**WHEREAS**, under A.R.S. § 23-108.03(B)(1), powers and duties prescribed by law to the Industrial Commission of Arizona may, subject to certain exceptions, be delegated by resolution to the Director or any of the Commission’s department heads or assistants;

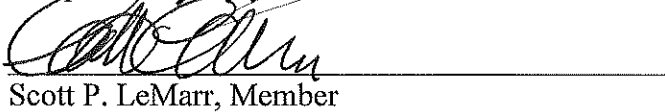
**NOW THEREFORE, BE IT RESOLVED BY THE INDUSTRIAL COMMISSION OF ARIZONA**, that the Commission hereby delegates the authority to review and approve or reject proposed settlements under A.R.S. § 23-941.01 to the Administrative Law Judge Division of the Commission.

Dated the 19<sup>th</sup> day of October, 2017, at the office of the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, Arizona.

APPROVED:

  
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Dale L. Schultz, Chairman

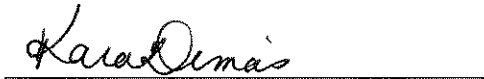
  
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Joseph M. Hennelly, Jr, Vice Chairman

  
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Scott P. LeMarr, Member

  
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Robin S. Orchard, Member

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Steven J. Krenzel, Member

ATTEST:

  
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Kara Dimas, Commission Secretary