

THE INDUSTRIAL COMMISSION OF ARIZONA



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

INFORMATION AND SUGGESTED BEST PRACTICES

DISCLAIMER: This document is advisory only and the Administrative Law Judge Division of the Industrial Commission of Arizona will not rely upon this document to adjudicate full and final settlement agreements submitted under A.R.S. § 23-941.01. This document is not intended to be a complete statement of law related to full and final settlements under Arizona workers' compensation system. The reader should refer to available sources of Arizona law or the advice of qualified legal counsel for complete and current information.

EFFECTIVE DATE: This document is intended to provide information and suggested best practices related to full and final settlement agreements submitted under A.R.S. § 23-941.01 *on or after August 3, 2018*.

FILING PRACTICES

1. A Petition for Approval of Full and Final Settlement 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. Parties should title submissions to reflect the full and final nature of a proposed settlement; *i.e.*, "Petition for Approval of Full and Final Settlement" and "Full and Final Settlement Agreement." Parties should avoid referring to a full and final settlement as a "compromise and settlement agreement" in the caption, body, or service pages of filed documents.
3. A Petition for Approval of Full and Final Settlement should attach the fully-executed Full and Final Settlement Agreement and all supporting documentation.
4. A Full and Final Settlement Agreement should be in writing. *See* A.R.S. § 23-941.01(B)(1).
5. A Full and Final Settlement Agreement should be "signed by the carrier, special fund or self-insured employer or an authorized representative of 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).
6. A Full and Final Settlement Agreement should include a description of the injured worker'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).

7. Parties filing a Full and Final Settlement Agreement should attach the information disclosed by the carrier, Special Fund, or self-insured employer pursuant to A.R.S. § 23-941.01(C)(2) & (C)(3). *See* A.R.S. § 23-941.01(B)(5). This includes:
 - A. **Medical Disclosure** – Written disclosure of the following: (1) reasonable anticipated future medical, surgical, and hospital benefits relating to the claim; (2) the projected cost of those benefits; (3) an explanation of how those projected costs were determined; and (4) the amount of the settlement that represents the settlement of future medical, surgical and hospital benefits; and
 - B. **Indemnity Disclosure** – Written disclosure of the following: (1) the total amount of future indemnity benefits; (2) the injured worker’s rated age, if applicable; (3) the injured worker’s life expectancy; (4) the source of the injured worker’s life expectancy; (5) the present value of future indemnity benefits; (6) the discount rate used to calculate present value; and (7) the amount of the settlement that represents the settlement of future indemnity benefits.

8. A Full and Final Settlement Agreement should include the following signed attestations *by the injured worker*:
 - A. The injured worker 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. The injured worker understands that he/she had the opportunity to seek legal advice and be represented by counsel. *See* A.R.S. § 23-941.01(B)(3).
 - C. The injured worker 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 in relation to the Full and Final Settlement).
 - D. The injured worker 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)(4). **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 statement explaining how the injured worker plans to set aside monies for future medical treatment.

9. A Full and Final Settlement Agreement should include the following signed attestations by *all parties*:

- A. The Full and Final Settlement Agreement settles a compensable claim. *See* A.R.S. § 23-941.01(A)(1), (K).
- B. The Full and Final Settlement Agreement settles a claim in which the period of disability has been terminated by: (1) a final notice of claim status; (2) award of the Commission; or (3) stipulation of the interested parties. **Note:** Unless the parties are stipulating to closure, the 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).
- C. The Full and Final Settlement Agreement does not settle 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(I).
- D. The Full and Final Settlement Agreement does not settle claims unrelated to the claim for compensation, benefits, penalties, and interest. *See* A.R.S. § 23-941.01(J).
- E. The carrier, Special Fund, or self-insured employer has provided the injured worker all information required by A.R.S. § 23-941.01(C)(2) & (C)(3).
- F. 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)(5). **Note:** This attestation should include a 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

- G. The parties have conducted a search for and taken reasonable steps to satisfy any identified medical liens and unpaid medical charges. *See* A.R.S. § 23-941.01(C)(6). **Note:** This attestation should include a discussion of all steps taken by the parties to search for medical liens and unpaid medical charges and all steps taken by the parties to satisfy applicable medical liens and medical charges.

H. No coercion, duress, fraud, misrepresentations, or undisclosed additional agreements have been used to achieve the Full and Final Settlement Agreement. *See* A.R.S. § 23-941.01(C)(7).

ADMINISTRATIVE LAW JUDGE REVIEW

1. An Administrative Law Judge will review Petitions for Approval of a Full and Final Settlement consistent with A.R.S. § 23-941.01(D), (E) & (F). An Administrative Law Judge may request further documentation or hold a hearing to gather further information from the parties. Parties should promptly comply with requests for further documentation or information.
2. In cases involving an unrepresented injured worker, an Administrative Law Judge will hold a hearing to make a detailed inquiry into the attestations provided by the unrepresented injured worker, including whether the unrepresented worker understands the specific rights being settled and released; the information, computation, and methodology provided by the carrier, Special Fund, or self-insured employer; and the unrepresented worker's responsibility to protect the interests of other payers and ensure the payment of future treatment costs. *See* A.R.S. § 23-941.01(E).
3. The Administrative Law Judge will approve or reject a Full and Final Settlement Agreement by written findings and award. In cases involving an unrepresented injured worker, the Administrative Law Judge will make specific factual findings regarding whether the requirements of A.R.S. § 23-941.01(B) & (C) are satisfied. *See* A.R.S. § 23-941.01(E).
4. Any interested party to a rejected Full and Final Settlement Agreement may file a request for review pursuant to A.R.S. §§ 23-942 & 23-943.
5. Appeals of decisions upon review may be made pursuant to A.R.S. § 23-951.

OTHER CONSIDERATIONS

In order to assist Administrative Law Judges in rendering informed and prompt decisions on Petitions for Approval of Full and Final Settlements, parties should provide the following information and documentation (either within the Full Final Settlement, 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 and the Industrial Claim:
 - A. Name, date of birth, and current address of the injured worker.
 - B. ICA Claim Number(s), date(s) of injury, and name of employer(s) on date(s) of injury.

- C. Relevant awards or notices regarding claim closure, medical benefits, and indemnity benefits (to include applicable loss of earning capacity and supportive care awards).
- D. Statement concerning the injured worker's primary language(s). 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. 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.

3. Apportionment:

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 relevant awards or notices regarding apportionment and provide an explanation for why Special Fund is not a party to the Full and Final Settlement.

POST-APPROVAL CONSIDERATIONS

Full and final settlement payments should be made to the injured worker within fifteen days after an award approving the settlement becomes final. *See* A.R.S. § 23-941.01(G).

A carrier, Special Fund, or self-insured employer should notify attending physicians of the approval of a full and final settlement if the full and final settlement terminates the employee's entitlement to medical benefits. Unless medical benefits rendered before the approval date of the full and final settlement are subject to a dispute or payment for the treatment was included in the full and final settlement agreement, the carrier, Special Fund, or self-insured employer remains responsible for payment for the treatment not covered by the full and final settlement agreement as provided by this chapter. *See* A.R.S. § 23-941.01(H).