

REFERENCE TITLE: **minimum wage; sick time repeal**

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SCR 1016

Introduced by
Senators Allen S: Barto, Borrelli, Burges, Fann, Farnsworth D, Griffin,
Kavanagh, Kerr, Petersen, Pratt, Worsley, Yee; Representatives Cook,
Leach

A CONCURRENT RESOLUTION

**ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING
TO EMPLOYMENT PRACTICES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the Senate of the State of Arizona, the House of
2 Representatives concurring:

3 1. Under the power of the referendum, as vested in the Legislature,
4 the following measure, relating to employment practices, is enacted to
5 become valid as a law if approved by the voters and on proclamation of the
6 Governor:

7 AN ACT

8 REPEALING SECTION 23-362, ARIZONA REVISED STATUTES, AS AMENDED
9 BY LAWS 1997, CHAPTER 51, SECTION 1; AMENDING SECTIONS 23-363
10 AND 23-364, ARIZONA REVISED STATUTES; REPEALING TITLE 23,
11 CHAPTER 2, ARTICLE 8.1, ARIZONA REVISED STATUTES; REPEALING
12 PROPOSITION 206, SECTIONS 1, 2, 6 AND 7, ELECTION OF NOVEMBER
13 8, 2016; RELATING TO EMPLOYMENT PRACTICES.

14 Be it enacted by the Legislature of the State of Arizona:

15 Section 1. Repeal

16 Section 23-362, Arizona Revised Statutes, as amended by
17 Laws 1997, chapter 51, section 1, is repealed.

18 Sec. 2. Heading change

19 The article heading of title 23, chapter 2, article 8,
20 Arizona Revised Statutes, is changed from "MINIMUM WAGE AND
21 EMPLOYEE BENEFITS" to "MINIMUM WAGE".

22 Sec. 3. Section 23-363, Arizona Revised Statutes, is
23 amended to read:

24 23-363. Minimum wage; state preemption

25 A. Employers shall pay employees ~~no~~ NOT less than ~~the~~
26 ~~minimum wage, which shall be not less than:~~

- 27 ~~1. \$10 on and after January 1, 2017.~~
- 28 ~~2. \$10.50 on and after January 1, 2018.~~
- 29 ~~3. \$11 on and after January 1, 2019.~~
- 30 ~~4. \$12 on and after January 1, 2020.~~

31 ~~B. The minimum wage shall be increased on January 1,~~
32 ~~2021 and on January 1 of successive years, by the increase in~~
33 ~~the cost of living. The increase in the cost of living shall~~
34 ~~be measured by the percentage increase as of August of the~~
35 ~~immediately preceding year over the level as of August of the~~
36 ~~previous year of the consumer price index (all urban~~
37 ~~consumers, U.S. city average for all items) or its successor~~
38 ~~index as published by the U.S. department of labor or its~~
39 ~~successor agency, with the amount of the minimum wage increase~~
40 ~~rounded to the nearest multiple of five cents TEN DOLLARS~~
41 ~~FIFTY CENTS PER HOUR.~~

42 ~~C.~~ B. For any employee who customarily and regularly
43 receives tips or gratuities from patrons or others, the
44 employer may pay a wage up to ~~\$3.00~~ THREE DOLLARS per hour
45 less than the minimum wage if the employer can establish by

1 its records of charged tips or by the employee's declaration
 2 for federal insurance contributions act ~~(FICA)~~ purposes that
 3 for each week, when adding tips received to wages paid, the
 4 employee received not less than the minimum wage for all hours
 5 worked. Compliance with this ~~provision~~ SUBSECTION will be
 6 determined by averaging tips received by the employee over the
 7 course of the employer's payroll period or any other period
 8 selected by the employer that complies with regulations
 9 adopted by the commission.

10 C. THE ESTABLISHMENT OF A UNIFORM MINIMUM WAGE IS OF
 11 STATEWIDE CONCERN. A COUNTY, CITY, TOWN OR OTHER POLITICAL
 12 SUBDIVISION OF THIS STATE MAY NOT ESTABLISH, MANDATE OR
 13 OTHERWISE REQUIRE A MINIMUM WAGE THAT IS MORE THAN THE MINIMUM
 14 WAGE ESTABLISHED IN THIS SECTION.

15 Sec. 4. Section 23-364, Arizona Revised Statutes, is
 16 amended to read:

17 23-364. Enforcement

18 A. The commission is authorized to enforce and
 19 implement this article and may ~~promulgate regulations~~ ADOPT
 20 RULES consistent with this article to do so. ~~For purposes of~~
 21 ~~this section: (1) "article shall mean both article 8 and~~
 22 ~~article 8.1 of this chapter; (2) "earned paid sick time" is as~~
 23 ~~defined in section 23-371, Arizona Revised Statutes;~~
 24 ~~(3) "employer" shall refer to the definition of employer in~~
 25 ~~section 23-362, Arizona Revised Statutes, for purposes of~~
 26 ~~minimum wage enforcement and shall refer to the definition of~~
 27 ~~employer in section 23-371, Arizona Revised Statutes, for~~
 28 ~~purposes of earned paid sick time enforcement; and~~
 29 ~~(4) "retaliation" shall mean denial of any right guaranteed~~
 30 ~~under article 8 and article 8.1 of this chapter and any~~
 31 ~~threat, discharge, suspension, demotion, reduction of hours,~~
 32 ~~or any other adverse action against an employee for the~~
 33 ~~exercise of any right guaranteed herein including any~~
 34 ~~sanctions against an employee who is the recipient of public~~
 35 ~~benefits for rights guaranteed herein. Retaliation shall also~~
 36 ~~include interference with or punishment for in any manner~~
 37 ~~participating in or assisting an investigation, proceeding or~~
 38 ~~hearing under this article.~~

39 B. ~~No employer or other person shall discriminate or~~
 40 ~~subject any person to retaliation for asserting any claim or~~
 41 ~~right under this article, for assisting any other person in~~
 42 ~~doing so, or for informing any person about their rights.~~
 43 ~~Taking adverse action against a person within ninety days of a~~
 44 ~~person's engaging in the foregoing activities shall raise a~~
 45 ~~presumption that such action was retaliation, which may be~~

1 ~~rebutted by clear and convincing evidence that such action was~~
2 ~~taken for other permissible reasons.~~

3 ~~C.~~ B. Any person or organization may file an
4 administrative complaint with the commission charging that an
5 employer has violated this article as to any employee or other
6 person. When the commission receives a complaint, the
7 commission may review records regarding all employees at the
8 employer's worksite in order to protect the identity of any
9 employee identified in the complaint and to determine whether
10 a pattern of violations has occurred. The name of any
11 employee identified in a complaint to the commission shall be
12 kept confidential as long as possible. Where the commission
13 determines that an employee's name must be disclosed in order
14 to investigate a complaint further, it may so do only with the
15 employee's consent.

16 ~~D.~~ C. Employers shall post notices in the workplace,
17 in ~~such~~ A format specified by the commission, notifying
18 employees of their rights under this article. Employers shall
19 provide their business name, address, ~~and~~ telephone number in
20 writing to employees ~~upon~~ ON hire. Employers shall maintain
21 payroll records showing the hours worked for each day worked,
22 and the wages ~~and earned paid sick time~~ paid to all employees
23 for a period of four years. Failure to do so ~~shall raise~~
24 RAISES a rebuttable presumption that the employer did not pay
25 the required minimum wage rate ~~or earned paid sick time~~. The
26 commission may by ~~regulation~~ RULE reduce or waive the
27 recordkeeping and posting requirements ~~herein~~ PRESCRIBED IN
28 THIS SECTION for any categories of small employers ~~whom~~ THAT
29 it finds would be unreasonably burdened by ~~such~~ THE
30 requirements. Employers shall permit the commission or a law
31 enforcement officer to inspect and copy payroll or other
32 business records, shall permit them to interview employees
33 away from the worksite, ~~and~~ shall not hinder any
34 investigation. ~~Such~~ THE information provided shall ~~keep~~ BE
35 KEPT confidential except as ~~is~~ required to prosecute
36 violations of this article. Employers shall permit an
37 employee or ~~his or her~~ THE EMPLOYEE'S designated
38 representative to inspect and copy payroll records pertaining
39 to that employee.

40 ~~E.~~ D. A civil action to enforce this article may be
41 maintained in a court of competent jurisdiction by a law
42 enforcement officer or by any private party injured by a
43 violation of this article.

44 ~~F.~~ E. Any employer ~~who~~ THAT violates recordkeeping,
45 posting, ~~or~~ other requirements that the commission ~~may~~

1 ~~establish~~ ESTABLISHES under this article ~~shall be~~ IS subject
 2 to a civil penalty of at least ~~\$250~~ TWO HUNDRED FIFTY dollars
 3 for a first violation, and at least ~~\$1000~~ ONE THOUSAND dollars
 4 for each subsequent or ~~willful~~ WILFUL violation and ~~may~~, if
 5 the commission or court determines appropriate, MAY be subject
 6 to special monitoring and inspections.

7 ~~G.~~ F. Any employer ~~who~~ THAT fails to pay the wages ~~or~~
 8 ~~earned paid sick time~~ required under this article shall ~~be~~
 9 ~~required to~~ pay the employee the balance of the wages ~~or~~
 10 ~~earned paid sick time~~ owed, including interest ~~thereon~~ ON THE
 11 WAGES OWED, and an additional amount equal to twice the
 12 underpaid wages ~~or earned paid sick time~~. ~~Any employer who~~
 13 ~~retaliates against an employee or other person in violation of~~
 14 ~~this article shall be required to pay the employee an amount~~
 15 ~~set by the commission or a court sufficient to compensate the~~
 16 ~~employee and deter future violations, but not less than one~~
 17 ~~hundred fifty dollars for each day that the violation~~
 18 ~~continued or until legal judgment is final~~. The commission
 19 and the courts shall have the authority to order payment of
 20 such unpaid wages, ~~unpaid earned sick time~~, other
 21 amounts, and civil penalties and to order any other
 22 appropriate legal or equitable relief for violations of this
 23 article. Civil penalties shall be retained by the agency that
 24 recovered them and used to finance activities to enforce this
 25 article. A prevailing plaintiff shall be entitled to
 26 reasonable ~~attorney's~~ ATTORNEY fees and costs of suit.

27 ~~H.~~ G. A civil action to enforce this article may be
 28 commenced ~~no~~ NOT later than two years after a violation last
 29 occurs, or three years in the case of a ~~willful~~ WILFUL
 30 violation, and may encompass all violations that occurred as
 31 part of a continuing course of employer conduct regardless of
 32 their date. The statute of limitations shall be tolled during
 33 any investigation of an employer by the commission or other
 34 law enforcement officer, but ~~such~~ THE investigation shall not
 35 bar a person from bringing a civil action under this article.
 36 ~~No~~ A verbal or written agreement or employment contract may
 37 NOT waive any rights under this article.

38 ~~I.~~ H. The legislature may by statute raise the minimum
 39 wage established under this article, extend coverage, or
 40 increase penalties. ~~A county, city, or town may by ordinance~~
 41 ~~regulate minimum wages and benefits within its geographic~~
 42 ~~boundaries but may not provide for a minimum wage lower than~~
 43 ~~that prescribed in this article~~. State agencies, counties,
 44 cities, towns and other political subdivisions of ~~the~~ THIS
 45 state may consider violations of this article in determining

1 whether employers may receive or renew public contracts,
2 financial assistance or licenses. This article shall be
3 liberally construed in favor of its purposes and shall not
4 limit the authority of the legislature or any other body to
5 adopt any law or policy that requires payment of higher or
6 supplemental wages or benefits, or that extends such
7 protections to employers or employees not covered by this
8 article, EXCEPT THAT A COUNTY, CITY, TOWN OR OTHER POLITICAL
9 SUBDIVISION OF THIS STATE MAY NOT ESTABLISH, MANDATE OR
10 OTHERWISE REQUIRE A MINIMUM WAGE THAT IS MORE THAN THE MINIMUM
11 WAGE ESTABLISHED IN SECTION 23-363.

12 Sec. 5. Repeal

13 Title 23, chapter 2, article 8.1, Arizona Revised
14 Statutes, is repealed.

15 Sec. 6. Repeal

16 Proposition 206, sections 1, 2, 6 and 7, election of
17 November 8, 2016, are repealed.

18 2. The Secretary of State shall submit this proposition to the
19 voters at the next general election as provided by article IV, part 1,
20 section 1, Constitution of Arizona.