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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - EMPLOYMENT SECURITY -
GENERAL PROVISIONS

Introduced By: Representatives Morgan, Giarrusso, Chippendale, and Newberry

Date Introduced: February 27, 2013

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-42-3 of the General Laws in Chapter 28-42 entitled
2 "Employment Security - General Provisions" is hereby amended to read as follows:

3 **28-42-3. Definitions. --** The following words and phrases, as used in chapters 42 -- 44 of
4 this title, have the following meanings unless the context clearly requires otherwise:

5 (1) "Administration account" means the employment security administration account
6 established by this chapter;

7 (2) "Average weekly wage" means the amount determined by dividing the individual's
8 total wages earned for service performed in employment within his or her base period by the
9 number of that individual's credit weeks within his or her base period;

10 (3) "Base period", with respect to an individual's benefit year means the first four (4) of
11 the most recently completed five (5) calendar quarters immediately preceding the first day of an
12 individual's benefit year. For any individual's benefit year and for any individual deemed
13 monetarily ineligible for benefits for the "base period" as defined in this subdivision, the
14 department shall make a re-determination of entitlement based upon the alternate base period
15 which consists of the last four (4) completed calendar quarters immediately preceding the first
16 day of the claimant's benefit year. Notwithstanding anything contained to the contrary in this
17 subdivision, the base period shall not include any calendar quarter previously used to establish a
18 valid claim for benefits; provided, that notwithstanding any provision of chapters 42 -- 44 of this

1 title to the contrary, for the benefit years beginning on or after October 4, 1992, whenever an
2 individual who has received workers' compensation benefits is entitled to reinstatement under
3 section 28-33-47, but the position to which reinstatement is sought does not exist or is not
4 available, the individual's base period shall be determined as if the individual filed for benefits on
5 the date of the injury;

6 (4) "Benefit" means the money payable to an individual as compensation for his or her
7 wage losses due to unemployment as provided in these chapters;

8 (5) "Benefit credits" means the total amount of money payable to an individual as
9 benefits, as determined by section 28-44-9;

10 (6) "Benefit rate" means the money payable to an individual as compensation, as
11 provided in chapters 42 -- 44 of this title, for his or her wage losses with respect to any week of
12 total unemployment;

13 (7) "Benefit year", with respect to any individual who does not already have a benefit
14 year in effect, and who files a valid claim for benefits means fifty-two (52) consecutive calendar
15 weeks, the first of which shall be the week containing the day as of which he or she first files a
16 valid claim in accordance with regulations adopted as hereinafter prescribed; provided, that the
17 benefit year shall be fifty-three (53) weeks if the filing of a new valid claim would result in
18 overlapping any quarter of the base period of a prior new claim previously filed by the individual.
19 In no event shall a new benefit year begin prior to the Sunday next following the end of the old
20 benefit year;

21 (8) "Calendar quarter" means the period of three (3) consecutive calendar months ending
22 March 31, June 30, September 30, and December 31; or the equivalent thereof in accordance with
23 regulations as subsequently prescribed;

24 (9) "Contributions" means the money payments to the state employment security fund
25 required by those chapters;

26 (10) "Credit week" means any week within an individual's base period in which that
27 individual earned wages amounting to at least twenty (20) times the minimum hourly wage as
28 defined in chapter 12 of this title for performing services in employment for one or more
29 employers subject to chapters 42 -- 44 of this title;

30 (11) "Crew leader", for the purpose of subdivision (18) of this section, means an
31 individual who:

32 (i) Furnishes individuals to perform service in agricultural labor for any other person;

33 (ii) Pays (either on his or her own behalf or on behalf of that other person) the
34 individuals so furnished by him or her for the service in agricultural labor performed by them;

1 and

2 (iii) Has not entered into a written agreement with that other person (farm operator)
3 under which that individual (crew leader) is designated as an employee of that other person (farm
4 operator).

5 (12) "Director" means the head of the department of labor and training or his or her
6 authorized representative;

7 (13) "Domestic service employment". "Employment" includes domestic service in a
8 private home performed for a person who paid cash remuneration of one thousand dollars
9 (\$1,000) or more in any calendar quarter in the current calendar year or the preceding calendar
10 year to individuals employed in that domestic service;

11 (14) "Employee" means any person who is or has been employed by an employer subject
12 to those chapters and in employment subject to those chapters;

13 (15) "Employer" means:

14 (i) Any employing unit that was an employer as of December 31, 1955;

15 (ii) Any employing unit which for some portion of a day on and after January 1, 1956,
16 has or had in employment within any calendar year one or more individuals; except, however, for
17 "domestic service employment", as defined in subdivision (13) of this section;

18 (iii) For the effective period of its election pursuant to section 28-42-12, any other
19 employing unit which has elected to become subject to chapters 42 -- 44 of this title;

20 (iv) Any employing unit not an employer by reason of any other paragraph of this
21 subdivision for which, within either the current or preceding calendar year, service is or was
22 performed with respect to which that employing unit is liable for any federal tax against which
23 credit may be taken for contributions required to be paid into this state's employment security
24 fund; or which, as a condition for approval of chapters 42 -- 44 of this title for full tax credit
25 against the tax imposed by the Federal Unemployment Tax Act, 26 U.S.C. section 3301 et seq., is
26 required, pursuant to that act, to be an "employer" under chapters 42 -- 44 of this title;

27 (16) "Employing unit" means any person, partnership, association, trust, estate, or
28 corporation whether domestic or foreign, or its legal representative, trustee in bankruptcy,
29 receiver, or trustee, or the legal representative of a deceased person, which has, or had in his or
30 her employ one or more individuals. For the purposes of subdivision (13) of this section a private
31 home shall be considered an employing unit only if the person for whom the domestic service
32 was performed paid cash remuneration of one thousand dollars (\$1,000) or more in any calendar
33 quarter in the current calendar year or the preceding calendar year to individuals employed in that
34 domestic service in that private home;

1 (17) (i) "Employment", subject to sections 28-42-4 -- 28-42-10, means service, including
2 service in interstate commerce, performed for wages or under any contract of hire, written or oral,
3 express or implied; provided, that service performed shall also be deemed to constitute
4 employment for all the purposes of chapters 42 -- 44 of this title, if performed by an individual in
5 the employ of a nonprofit organization as described in subdivision (24) of this section except as
6 provided in section 28-42-8(7).

7 (ii) Notwithstanding any other provisions of this section, "Employment" also means
8 service with respect to which a tax is required to be paid under any federal law imposing a tax
9 against which credit may be taken for contributions required to be paid into this state's
10 employment security fund or which as a condition for full tax credit against the tax imposed by
11 the Federal Unemployment Tax Act is required to be covered under chapters 42 -- 44 of this title;

12 (18) "Employment -- Crew leader". For the purposes of subdivision (14) of this section:

13 (i) Any individual who is a member of a crew furnished by a crew leader to perform
14 service in agricultural labor for any other person shall be treated as an employee of that crew
15 leader if:

16 (A) That crew leader holds a valid certificate of registration under the Migrant and
17 Seasonal Agricultural Worker Protection Act, 29 U.S.C. section 1801 et seq., or substantially all
18 members of that crew operate or maintain tractors, mechanized harvesting, or crop-dusting
19 equipment, or any other mechanized equipment, which is provided by that crew leader; and

20 (ii) That individual is not an employee of that other person within the meaning of
21 subdivision (14) of this section; and

22 (iii) In the case of any individual who is furnished by a crew leader to perform service in
23 agricultural labor for any other person and who is not treated as an employee of that crew leader:

24 (A) That other person and not the crew leader shall be treated as the employer of that
25 individual; and

26 (B) That other person shall be treated as having paid cash remuneration to that individual
27 in an amount equal to the amount of cash remuneration paid to that individual by the crew leader
28 (either on his or her own behalf or on behalf of that other person) for the service in agricultural
29 labor performed for that other person;

30 (19) "Employment office" means a free public employment office, or its branch,
31 operated by the director or by this state as part of a system of free public employment offices, or
32 any other agency that the director may designate with the approval of the Social Security
33 Administration;

34 (20) "Fund" means the employment security fund established by this chapter;

1 (21) "Governmental entity" means state and local governments in this state and includes
2 the following:

3 (i) The state of Rhode Island or any of its instrumentalities, or any political subdivision
4 of the state or any of its instrumentalities;

5 (ii) Any instrumentality of more than one of these entities; or

6 (iii) Any instrumentality of any of these entities and one or more other states or political
7 subdivisions;

8 (22) "Hospital" means an institution that has been licensed, certified, or approved by the
9 department of health as a hospital;

10 (23) (i) "Institution of higher education" means an educational institution in this state
11 which:

12 (A) Admits as regular students only individuals having a certificate of graduation from a
13 high school, or the recognized equivalent of such certificate;

14 (B) Is legally authorized within this state to provide a program of education beyond high
15 school;

16 (C) Provides:

17 (I) An educational program for which it awards a bachelor's or higher degree, or a
18 program that is acceptable for full credit toward such a degree;

19 (II) A program of post-graduate or post-doctoral studies; or

20 (III) A program of training to prepare students for gainful employment in a recognized
21 occupation; and

22 (D) Is a public or other non-profit institution.

23 (ii) Notwithstanding any of the preceding provisions of this subdivision, all colleges and
24 universities in this state are institutions of higher education for purposes of this section;

25 (24) "Nonprofit organization" means an organization or group of organizations as
26 defined in 26 U.S.C. section 501(c)(3) which is exempt from income tax under 26 U.S.C. section
27 501(a);

28 (25) (i) "Partial unemployment". An employee shall be deemed partially unemployed in
29 any week of less than full-time work if he or she fails to earn in wages for that week an amount
30 equal to the weekly benefit rate for total unemployment to which he or she would be entitled if
31 totally unemployed and eligible.

32 (ii) For the purposes of this subdivision and subdivision (27) of this section, "Wages"
33 includes only that part of remuneration for any work, which is in excess of one-fifth (1/5) of the
34 weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar

1 (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one
2 week, and "services" includes only that part of any work for which remuneration in excess of
3 one-fifth (1/5) of the weekly benefit rate for total unemployment, rounded to the next lower
4 multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed
5 and eligible in any one week is payable; provided, that nothing contained in this paragraph shall
6 permit any individual to whom remuneration is payable for any work performed in any week in
7 an amount equal to or greater than his or her weekly benefit rate to receive benefits under this
8 subdivision for that week.

9 (iii) Notwithstanding anything contained to the contrary in this subdivision, "Services",
10 as used in this subdivision and in subdivision (27) of this section, does not include services
11 rendered by an individual under the exclusive supervision of any agency of this state, or any of its
12 political subdivisions, by which the services are required solely for the purpose of affording
13 relief, support, or assistance to needy individuals performing those services, or services
14 performed by members of the national guard and organized reserves in carrying out their duties in
15 weekly drills as members of those organizations. "Wages", as used in this subdivision and in
16 subdivision (27) of this section, does not include either remuneration received by needy
17 individuals for rendering the aforementioned services when that remuneration is paid exclusively
18 from funds made available for that purpose out of taxes collected by this state or any of its
19 political subdivisions, or remuneration received from the federal government by members of the
20 national guard and organized reserves, as drill pay, including longevity pay and allowances;

21 (26) "Payroll" means the total amount of all wages paid by the employer to his or her
22 employees for employment;

23 (27) "Total unemployment." An individual shall be deemed totally unemployed in any
24 week in which he or she performs no services (as used in subdivision (25) of this section) and for
25 which he or she earns no wages (as used in subdivision (25) of this section), and in which he or
26 she cannot reasonably return to any self-employment in which he or she has customarily been
27 engaged;

28 (28) "Wages" means all remuneration paid for personal services on or after January 1,
29 1940, including commissions and bonuses and the cash value of all remuneration paid in any
30 medium other than cash, and all other remuneration which is subject to a tax under a federal law
31 imposing a tax against which credit may be taken for contributions required to be paid into a state
32 unemployment fund. Gratuities customarily received by an individual in the course of his or her
33 employment from persons other than his or her employing unit shall be treated as wages paid by
34 his or her employing unit. The reasonable cash value of remuneration paid in any medium other

1 than cash, and the reasonable amount of gratuities, shall be estimated and determined in
2 accordance with rules prescribed by the director; except that for the purpose of this subdivision
3 and of sections 28-43-1 -- 28-43-14, this term does not include:

4 (i) That part of remuneration which is paid by an employer to an individual with respect
5 to employment during any calendar year, after remuneration equal to the amount of the taxable
6 wage base as determined in accordance with section 28-43-7 has been paid during that calendar
7 year by the employer or his or her predecessor to that individual; provided, that if the definition of
8 "Wages" as contained in the Federal Unemployment Tax Act is amended to include remuneration
9 in excess of the taxable wage base for that employment, then, for the purposes of sections 28-43-1
10 -- 28-43-14, "Wages" includes the remuneration as previously set forth up to an amount equal to
11 the dollar limitation specified in the federal act. For the purposes of this subdivision,
12 "Employment" includes services constituting employment under any employment security law of
13 another state or of the federal government;

14 (ii) The amount of any payment made to, or on behalf of, an employee under a plan or
15 system established by an employer which makes provision for his or her employees generally or
16 for a class or classes of his or her employees (including any amount paid by an employer or an
17 employee for insurance or annuities, or into a fund, to provide for any such payment), on account
18 of:

19 (A) Retirement;

20 (B) Sickness or accident disability;

21 (C) Medical and hospitalization expenses in connection with sickness or accident
22 disability; or

23 (D) Death; provided, that the employee has not the:

24 (I) Option to receive, instead of provision for that death benefit, any part of that payment
25 or, if that death benefit is insured, any part of the premiums (or contributions to premiums) paid
26 by his or her employer; and

27 (II) Right, under the provisions of the plan or system or policy of insurance providing for
28 that death benefit, to assign that benefit, or to receive a cash consideration in lieu of that benefit
29 either upon his or her withdrawal from the plan or system providing for that benefit or upon
30 termination of the plan or system or policy of insurance, or of his or her employment with that
31 employer.

32 (E) The payment by an employer (without deduction from the remuneration of the
33 employee) of:

34 (I) The tax imposed upon an employee under 26 U.S.C. section 3101; or

1 (II) Any payment required from an employee under chapters 42 -- 44 of this title.

2 (iii) Any amount paid by an employee or an amount paid by an employer under a benefit
3 plan organized under Section 125 of the Internal Revenue Code [26 U.S.C. section 125_.

4 (29) "Week" means the seven (7) day calendar week beginning on Sunday at 12:01 A.M.
5 and ending on Saturday at 12:00 A.M. midnight.

6 (30) "Seasonal industry" means an industry which customarily lays off forty percent
7 (40%) or more of its workers for at least three (3) consecutive month's during a regularly
8 recurring period in each twelve (12) month period.

9 (31) "Seasonal employee" means an employee who earns forty-five percent (45%) or
10 more of his or her base period wages through employment in a seasonal industry.

11 SECTION 2. Chapter 28-44 of the General Laws entitled "Employment Security -
12 Benefits" is hereby amended by adding thereto the following section:

13 **28-44-71. Seasonal employees. --** Benefits to seasonal employees employed in a
14 seasonal industry shall be limited to unemployment occurring during the operating period of the
15 seasonal industry.

16 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO LABOR AND LABOR RELATIONS - EMPLOYMENT SECURITY -
GENERAL PROVISIONS

1 This act would provide that unemployment benefits paid to seasonal employees
2 employed in a seasonal industry would be limited to unemployment occurring during the
3 operating period of the seasonal industry.

4 This act would take effect upon passage.

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