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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - TEMPORARY DISABILITY  
INSURANCE - COVERAGE

Introduced By: Representatives Canario, Fellela, Azzinaro, Bennett, and Johnston

Date Introduced: March 01, 2017

Referred To: House Labor

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 28-39-2 and 28-39-26 of the General Laws in Chapter 28-39  
2 entitled "Temporary Disability Insurance - General Provisions" are hereby amended to read as  
3 follows:

4           **28-39-2. Definitions.**

5           The following words and phrases, as used in chapters 39 -- 41 of this title, have the  
6 following meanings unless the context clearly requires otherwise:

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

10          (2) "Base period" with respect to an individual's benefit year when the benefit year begins  
11 on or after October 7, 1990, means the first four (4) of the most recently completed five (5)  
12 calendar quarters immediately preceding the first day of an individual's benefit year; provided,  
13 that for any individual's benefit year when the benefit year begins on or after October 4, 1992,  
14 and for any individual deemed monetarily ineligible for benefits under the "base period" as  
15 defined in this subdivision, the department shall make a re-determination of entitlement based  
16 upon an alternate base period which consists of the last four (4) completed calendar quarters  
17 immediately preceding the first day of the claimant's benefit year. Notwithstanding anything  
18 contained to the contrary in this subdivision, the base period shall not include any calendar

1 quarter previously used to establish a valid claim for benefits; provided, however, that the "base  
2 period" with respect to members of the United States military service, the Rhode Island National  
3 Guard, or a United States military reserve force, and who served in a United States declared  
4 combat operation during their military service, who file a claim for benefits following their  
5 release from their state or federal active military service and who are deemed to be monetarily  
6 ineligible for benefits under this section, shall mean the first four (4) of the most recently  
7 completed five (5) calendar quarters immediately preceding the first day the individual was called  
8 into that state or federal active military service; provided, that for any individual deemed  
9 monetarily ineligible for benefits under the "base period" as defined in this section, the  
10 department shall make a re-determination of entitlement based upon an alternative base period  
11 which consists of the last four (4) completed calendar quarters immediately preceding the first  
12 day the claimant was called into that state or federal active military service. Notwithstanding any  
13 provision of this section of the general or public laws to the contrary, the base period shall not  
14 include any calendar quarter previously used to establish a valid claim for benefits;

15 (3) "Benefit" means the money payable, as provided in chapters 39 -- 41 of this title, to  
16 an individual as compensation for his or her unemployment caused by sickness;

17 (4) "Benefit credits" means the total amount of money payable to an individual as  
18 benefits, as provided in § 28-41-7;

19 (5) "Benefit rate" means the money payable to an individual as compensation, as  
20 provided in chapters 39 -- 41 of this title, for his or her wage losses with respect to any week  
21 during which his or her unemployment is caused by sickness;

22 (6) "Benefit year" with respect to any individual who does not already have a benefit year  
23 in effect, and who files a valid claim for benefits as of November 16, 1958 or any later date,  
24 means fifty-two (52) consecutive calendar weeks, the first of which shall be the week containing  
25 the day as of which he or she first files that valid claim in accordance with regulations adopted as  
26 subsequently prescribed; provided, that for any benefit year beginning on or after October 7,  
27 1990, the benefit year shall be fifty-three (53) consecutive calendar weeks if the subsequent filing  
28 of a new valid claim immediately following the end of a previous benefit year would result in the  
29 overlapping of any quarter of the base period of the prior new claim. In no event shall a new  
30 benefit year begin prior to the Sunday next following the end of the old benefit year;

31 (i) For benefit years that begin on or after July 1, 2012, an individual's benefit year will  
32 begin on the Sunday of the calendar week in which an individual first became unemployed due to  
33 sickness and for which the individual has filed a valid claim for benefits;

34 (7) "Board" means the board of review as created under chapter 19 of title 42;

1 (8) "Calendar quarter" has the same definition as contained in chapter 42 of this title;

2 (9) "Credit week" means any week within an individual's base period in which that  
3 individual earns wages amounting to at least twenty (20) times the minimum hourly wage as  
4 defined in chapter 12 of this title, for performing services in employment for one or more  
5 employers subject to chapters 39 -- 41 of this title;

6 (10) "Director" means the director of the department of labor and training;

7 (11) "Employee" means any person who is or has been employed by an employer subject  
8 to chapters 39 -- 41 of this title and in employment subject to those chapters;

9 (12) "Employer" means any employing unit that is an employer under chapters 42 -- 44  
10 of this title;

11 (13) "Employing unit" has the same definition as contained in chapter 42 of this title and  
12 includes any governmental entity that elects to become subject to the provisions of chapters 39 --  
13 41 of this title, in accordance with the provisions of §§ 28-39-3.1 and 28-39-3.2;

14 (14) "Employment" has the same definition as contained in chapter 42 of this title;

15 (15) "Employment office" has the same definition as contained in chapter 42 of this title;

16 (16) "Fund" means the Rhode Island temporary disability insurance fund established by  
17 this chapter;

18 (17) "Partial unemployment due to sickness" For weeks beginning on or after January 1,  
19 2006 an individual shall be deemed partially unemployed due to sickness in any week of less than  
20 full-time work if he or she fails to earn in wages for services for that week an amount equal to the  
21 weekly benefit rate for total unemployment due to sickness to which he or she would be entitled  
22 if totally unemployed due to sickness and eligible.

23 (i) For the purposes of this subdivision and subdivision (22) of this section, "Wages"  
24 includes only that part of remuneration for any work, which is in excess of one-fifth (1/5) of the  
25 weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar  
26 (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one  
27 week, and "services" includes only that part of any work for which remuneration in excess of  
28 one-fifth (1/5) of the weekly benefit rate for total unemployment, rounded to the next lower  
29 multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed  
30 and eligible in any one week is payable; provided, that nothing contained in this paragraph shall  
31 permit any individual to whom remuneration is payable for any work performed in any week in  
32 an amount equal to, or greater than, his or her weekly benefit rate to receive benefits under this  
33 subdivision for that week.

34 (18) "Reserve fund" means the temporary disability insurance reserve fund established by

1 § 28-39-7;

2 [\(19\) "Rhode Island resident" means any person who resides in the state of Rhode Island](#)  
3 [and has been issued a driver's license or identification card by the Rhode Island division of motor](#)  
4 [vehicles.](#)

5 ~~(19)~~(20) "Services" means all endeavors undertaken by an individual that are paid for by  
6 another or with respect to which the individual performing the services expects to receive wages  
7 or profits;

8 ~~(20)~~(21) "Sickness". An individual shall be deemed to be sick in any week in which,  
9 because of his or her physical or mental condition, including pregnancy, he or she is unemployed  
10 and unable to perform his or her regular or customary work or services;

11 ~~(21)~~(22) (i) "Taxes" means the money payments required by chapters 39 -- 41 of this title,  
12 to be made to the temporary disability insurance fund or to the temporary disability insurance  
13 reserve fund.

14 (ii) Wherever and whenever in chapters 39 -- 41 of this title, the words "contribution"  
15 and/or "contributions" appear, those words shall be construed to mean the "taxes," as defined in  
16 this subdivision, which are the money payments required by those chapters to be made to the  
17 temporary disability insurance fund or to the temporary disability insurance reserve fund;

18 ~~(22)~~(23) "Wages" has the same definition as contained in chapter 42 of this title;  
19 provided, that no individual shall be denied benefits under chapters 39 -- 41 of this title because  
20 his or her employer continues to pay to that individual his or her regular wages, or parts of them,  
21 while he or she is unemployed due to sickness and unable to perform his or her regular or  
22 customary work or services. The amount of any payments, whether or not under a plan or system,  
23 made to or on behalf of an employee by his or her employer after the expiration of six (6)  
24 calendar months following the last calendar month in which the employee performed actual bona  
25 fide personal services for his or her employer, shall not be deemed to be wages either for the  
26 purpose of paying contributions thereon under chapter 40 of this title, or for the purpose of being  
27 used as a basis for paying benefits under chapter 41 of this title; and

28 ~~(23)~~(24) "Week" has the same definition as contained in chapter 42 of this title.

29 **28-39-26. Pecuniary penalty for failure to make contributions or reports.**

30 An employer [or Rhode Island resident](#) who fails to file any report required under chapters  
31 39 -- 41 of this title, or who fails or refuses to pay any contributions required under those chapters  
32 in the manner and at the times required by the laws and regulations or as the director may, in  
33 accordance with those laws and regulations, prescribe, shall pay a penalty of ten dollars (\$10.00)  
34 for each failure or refusal to file, and where any contribution is due, shall pay an additional

1 penalty of ten percent (10%) of the amount due. These penalties shall be paid into the temporary  
2 disability insurance reserve fund, and shall be in addition to contributions and interest required to  
3 be paid as provided in chapters 39 -- 41; provided, that if any employer or Rhode Island resident  
4 fails to pay the penalty, when assessed, it shall be collected by civil action as provided in § 28-40-  
5 12.

6 SECTION 2. Chapter 28-39 of the General Laws entitled "Temporary Disability  
7 Insurance - General Provisions" is hereby amended by adding thereto the following section:

8 **28-39-3.5. Noncovered Rhode Island residents eligible by election.**

9 (a) Notwithstanding any inconsistent provisions of chapters 39 through 41 of this title,  
10 any Rhode Island resident who works for a nongovernmental out-of-state employer and whose  
11 employment is covered by the unemployment insurance program in that state, and who is not  
12 already covered by the provisions of chapters 39 through 41 of this title or a similar public short-  
13 term disability insurance program provided by another state, may become subject to those  
14 chapters by filing an enrollment form with the department within the annual open enrollment  
15 period which shall extend from January 1 to January 31 of each calendar year in accordance with  
16 the rules established by the department for enrollment. Notwithstanding any other provisions of  
17 chapters 39 through 41 of this title to the contrary, no Rhode Island resident will be eligible for  
18 benefits under those chapters until the completion of one continuous calendar year of making the  
19 required contributions for participation in the program as described in §28-40-1. Except as  
20 otherwise provided in this title, all other provisions of these chapters shall continue to be  
21 applicable in connection with the employment.

22 (b) Any Rhode Island resident who fails to meet the quarterly reporting requirements or  
23 make the required quarterly contributions in a timely manner shall be ineligible to receive  
24 benefits under chapters 39 through 41 of this title until such time as that person shall have met  
25 those requirements for four (4) consecutive calendar quarters. Individuals who fail to file timely  
26 for a particular quarter by the end of the first month of the succeeding quarter shall not be eligible  
27 to make late payments in order to be eligible for benefits under chapters 39 through 41 of this  
28 title.

29 SECTION 3. Sections 28-40-1 and 28-40-9 of the General Laws in Chapter 28-40  
30 entitled "Temporary Disability Insurance - Contributions" are hereby amended to read as follows:

31 **28-40-1. Amount of employee contributions -- Wages on which based.**

32 (a) The taxable wage base under this chapter for each calendar year shall be equal to the  
33 greater of thirty-eight thousand dollars (\$38,000) or the annual earnings needed by an individual  
34 to qualify for the maximum weekly benefit amount and the maximum duration under chapters 39

1 -- 41 of this title. That taxable wage base shall be computed as follows: Every September 30, the  
2 maximum weekly benefit amount in effect as of that date shall be multiplied by thirty (30) and  
3 the resultant product shall be divided by thirty-six hundredths (.36). If the result thus obtained is  
4 not an even multiple of one hundred dollars (\$100), it shall be rounded upward to the next higher  
5 even multiple of one hundred dollars (\$100). That taxable wage base shall be effective for the  
6 calendar year beginning on the next January 1.

7 (b) Each employee shall contribute with respect to employment after the date upon which  
8 the employer becomes subject to chapters 39 -- 41 of this title, an amount equal to the fund cost  
9 rate times the wages paid by the employer to the employee up to the taxable wage base as defined  
10 and computed in subsection (a) of this section. The employee contribution rate for the following  
11 calendar year shall be determined by computing the fund cost rate on or before November 15 of  
12 each year as follows:

13 (1) The total amount of disbursements made from the fund for the twelve (12) month  
14 period ending on the immediately preceding September 30 shall be divided by the total taxable  
15 wages paid by employers during the twelve (12) month period ending on the immediately  
16 preceding June 30. The ratio thus obtained shall be multiplied by one hundred (100) and the  
17 resultant product if not an exact multiple of one-tenth of one percent (0.1%) shall be rounded  
18 down to the next lowest multiple of one-tenth of one percent (0.1%);

19 (2) If the fund balance as of the preceding September 30 is less than the total  
20 disbursements from the fund for the six (6) month period ending on that September 30, that  
21 difference shall be added to the total disbursements for the twelve (12) month period ending  
22 September 30 for the purpose of computing the fund cost rate, and if the resulting fund cost rate is  
23 not an exact multiple of one-tenth of one percent (0.1%) it shall be rounded to the nearest  
24 multiple of one-tenth of one percent (0.1%).

25 [\(c\) Every Rhode Island resident who became eligible for the coverage under chapters 39](#)  
26 [through 41 of this title under the provisions of §28-39-3.5 shall also pay an administrative fee of](#)  
27 [one-tenth of one percent \(0.1%\) in addition to the contribution required under subsection \(b\) of](#)  
28 [this section.](#)

29 **28-40-9. Interest on delinquent payments.**

30 Employers [or Rhode Island residents](#) who fail to make payment of contributions, as  
31 required by chapters 39 -- 41 of this title, or by the prescribed rules and regulations, shall be  
32 additionally liable to the temporary disability insurance reserve fund for interest on those  
33 delinquent payments at the rate of one and one-half percent (1 1/2%) per month from the date the  
34 payment became due until paid.

1 SECTION 4. Section 28-41-2 of the General Laws in Chapter 28-41 entitled "Temporary  
2 Disability Insurance - Benefits" is hereby amended to read as follows:

3 **28-41-2. Wages included for benefit purposes.**

4 Notwithstanding any provisions of chapters 39 -- 41 of this title to the contrary:

5 (1) ~~"wages"~~ "Wages" as used in the phrase "wages for employment from employers"  
6 means, with reference to the benefits provisions of chapters 39 -- 41 of this title, ~~only~~ those wages  
7 which are paid subsequent to the date upon which the employing unit, by whom those wages  
8 were paid, has satisfied the conditions of § 28-39-2 (12) with respect to becoming an employer  
9 subject to those chapters. No individual shall be denied benefits under chapters 39 -- 41 of this  
10 title because his or her employer continued to pay to that individual his or her regular wages, or  
11 parts of them, while he or she was sick and unable to perform his or her regular or customary  
12 work or services.

13 (2) With respect to Rhode Island residents with "wages" earned with a nongovernmental  
14 out-of-state employer and whose employment is covered by the unemployment insurance  
15 program in that state, and who is not already covered by the provisions of chapters 39 through 41  
16 of this title, those wages shall be considered wages for determining benefits under chapters 39  
17 through 41 of this title if the individual has applied for coverage under the temporary disability  
18 insurance program in accordance with the provisions of §28-39-3.5.

19 (3) The amount of any payments, whether or not under a plan or system, made to or on  
20 behalf of an employee by his or her employer after the expiration of six (6) calendar months  
21 following the last calendar month in which the employee performed actual bona fide personal  
22 services for that employer, shall not be deemed to be wages for the purpose of being used as a  
23 basis for paying benefits under chapter 41 of this title.

24 SECTION 5. This act shall take effect on January 1, 2018.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - TEMPORARY DISABILITY  
INSURANCE - COVERAGE

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1           This act would allow Rhode Island residents who work for an out-of-state  
2 nongovernmental employer to apply for coverage under Rhode Island's temporary disability  
3 insurance program.

4           This act would take effect on January 1, 2018.

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