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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 - WORKERS' COMPENSATION -
BENEFITS

Introduced By: Senators Doyle, and Ciccone

Date Introduced: January 18, 2017

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-33-18 and 28-33-20 of the General Laws in Chapter 28-33
2 entitled "Workers' Compensation - Benefits" are hereby amended to read as follows:

3 **28-33-18. Weekly compensation for partial incapacity.**

4 (a) While the incapacity for work resulting from the injury is partial, the employer shall
5 pay the injured employee a weekly compensation equal to ~~seventy-five percent (75%)~~ eighty-five
6 percent (85%) of the difference between his or her spendable average weekly base wages,
7 earnings, or salary before the injury as computed pursuant to the provisions of § 28-38-20, and his
8 or her spendable weekly wages, earnings, salary, or earnings capacity after that, but not more than
9 the maximum weekly compensation rate for total incapacity as set forth in § 28-33-17. The
10 provisions of this section are subject to the provisions of § 28-33-18.2.

11 (b) For all injuries occurring on or after September 1, 1990, where an employee's
12 condition has reached maximum medical improvement and the incapacity for work resulting from
13 the injury is partial, while the incapacity for work resulting from the injury is partial, the
14 employer shall pay the injured employee a weekly compensation equal to seventy percent (70%)
15 of the weekly compensation rate as set forth in subsection (a) of this section. The court ~~may, in its~~
16 ~~discretion,~~ shall take into consideration the performance of the employee's duty to actively seek
17 employment in scheduling the implementation of the reduction. The provisions of this subsection
18 are subject to the provisions of § 28-33-18.2.

1 (c) (1) ~~Earnings capacity determined from degree of functional impairment pursuant to §~~
2 ~~28-29-2(3) shall be determined as a percentage of the whole person based on the Sixth (6th)~~
3 ~~edition of the American Medical Association Guides To The Value Of Permanent Impairment.~~

4 ~~Earnings capacity shall be calculated from the percentage of impairment as follows:~~

5 (i) ~~For impairment of five percent (5%) or less, earnings capacity shall be calculated so as~~
6 ~~to extinguish one hundred percent (100%) of weekly benefits.~~

7 (ii) ~~For impairment of twenty five percent (25%) or less, but greater than five percent~~
8 ~~(5%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less~~
9 ~~the percent of impairment of weekly benefits.~~

10 (iii) ~~For impairment of fifty percent (50%) or less, but greater than twenty five percent~~
11 ~~(25%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less~~
12 ~~one point two five (1.25) times the percent of impairment of weekly benefits.~~

13 (iv) ~~For impairment of sixty five percent (65%) or less, but greater than fifty percent~~
14 ~~(50%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less~~
15 ~~one point five (1.5) times the percent of impairment of weekly benefits.~~

16 (2) ~~An earnings capacity adjustment under this section shall be applicable only when the~~
17 ~~employee's condition has reached maximum medical improvement under § 28-29-2(3)(ii) and~~
18 ~~benefits are subject to adjustment pursuant to subsection (b) of this section.~~

19 (d) ~~In the event partial compensation is paid, in no case shall the period covered by the~~
20 ~~compensation be greater than three hundred and twelve (312) weeks. In the event that~~
21 ~~compensation for partial disability is paid under this section for a period of three hundred and~~
22 ~~twelve (312) weeks, the employee's right to continuing weekly compensation benefits shall be~~
23 ~~determined pursuant to the terms of § 28-33-18.3. At least twenty six (26) weeks prior to the~~
24 ~~expiration of the period, the employer or insurer shall notify the employee and the director of its~~
25 ~~intention to terminate benefits at the expiration of three hundred and twelve (312) weeks and~~
26 ~~advise the employee of the right to apply for a continuation of benefits under the terms of § 28-~~
27 ~~33-18.3. In the event that the employer or insurer fails to notify the employee and the director as~~
28 ~~prescribed, the employer or insurer shall continue to pay benefits to the employee for a period~~
29 ~~equal to twenty six (26) weeks after the date the notice is served on the employee and the~~
30 ~~director.~~

31 **28-33-20. Computation of earnings.**

32 (a) For the purposes of this chapter, the average weekly wage shall be ascertained as
33 follows:

34 (1) For full-time or regular employees, by dividing the gross wages, inclusive of overtime

1 pay; provided, that bonuses and overtime shall be averaged over the length of employment but
2 not in excess of the preceding fifty-two (52) week period, earned by the injured worker in
3 employment by the employer in whose service he or she is injured during the thirteen (13)
4 calendar weeks immediately preceding the week in which he or she was injured, by the number of
5 calendar weeks during which, or any portion of which, the worker was actually employed by that
6 employer, including any paid vacation time. In making this computation, absence for seven (7)
7 consecutive calendar days, although not in the same calendar week, shall be considered as
8 absence for a calendar week. When the employment commenced otherwise than the beginning of
9 a calendar week, the calendar week and wages earned during that week shall be excluded in
10 making the above computation. When the employment previous to injury as provided above is
11 computed to be less than a net period of two (2) calendar weeks, his or her weekly wage shall be
12 considered to be equivalent to the average weekly wage prevailing in the same or similar
13 employment at the time of injury except that when an employer has agreed to pay a certain hourly
14 wage to the worker, then the hourly wage so agreed upon shall be the hourly wage for the injured
15 worker and his or her average weekly wage shall be computed by multiplying that hourly wage
16 by the number of weekly hours scheduled for full-time work by full-time employees regularly
17 employed by the employer. Where the injured employee has worked for more than one employer
18 during the thirteen (13) weeks immediately preceding his or her injury, his or her average weekly
19 wages shall be calculated upon the basis of wages earned from all those employers in the period
20 involved by totaling the gross earnings from all the employers and dividing by the number of
21 weeks in which he or she was actually employed by any employer, in the same manner as if the
22 employee had worked for a single employer and, except in the case of apportionment of liability
23 among successive employers as provided in § 28-34-8, the employer in whose employ the injury
24 was sustained shall be liable for all benefits provided by chapters 29 -- 38 of this title. A schedule
25 of the computation of the average weekly wage in compliance with this section shall be a
26 necessary part of the memorandum of agreement required by § 28-35-1. Where the employer has
27 been accustomed to paying the employee a sum to cover any special expense incurred by the
28 employee by the nature of his or her employment, the sum paid shall not be reckoned as part of
29 the employee's wages, earnings, or salary. The fact that an employee has suffered a previous
30 injury or received compensation for a previous injury shall not preclude compensation for a later
31 injury or for death; but in determining the compensation for the later injury or death, his or her
32 average weekly wages shall be any sum that will reasonably represent his or her weekly earning
33 capacity at the time of the later injury, in the employment in which he or she was working at that
34 time, and shall be arrived at according to, and subject to the limitations of, the provisions of this

1 section. In computing the average weekly wages earned subsequent to the first injury, the time
2 worked and wages earned prior to that injury shall be excluded.

3 (2) In occupations that are seasonal, the "average weekly wage" means one-fifty second
4 (1/52) of the total wages which the employee has earned during the twelve (12) calendar months
5 immediately preceding the injury.

6 (3) "Wages of an employee working part-time" means the gross wages earned during the
7 number of weeks so employed, or of weeks in which the employee worked, up to a maximum of
8 twenty-six (26) calendar weeks immediately preceding the date of injury, divided by the number
9 of weeks employed, or by twenty-six (26), as the case may be. "Part-time" means working by
10 custom and practice under the verbal or written employment contract in force at the time of the
11 injury, where the employee agrees to work or is expected to work on a regular basis less than
12 twenty (20) hours per week. Wages shall be calculated as follows:

13 (i) For part-time employees, by dividing the gross wages, inclusive of overtime pay;
14 provided, any bonuses and overtime shall be averaged over the length of employment but not in
15 excess of the preceding fifty-two (52) week period, earned by the injured worker in employment
16 by the employer in whose service he or she is injured during the twenty-six (26) consecutive
17 calendar weeks immediately preceding the week in which he or she was injured, by the number of
18 calendar weeks during which, or any portion of which, the worker was actually employed by that
19 employer, including any paid vacation time. In making this computation, absence for seven (7)
20 consecutive calendar days, although not in the same calendar week, shall be considered as
21 absence for a calendar week. Overtime pay shall be averaged over the twenty-six (26) weeks
22 preceding the injury and added to the average weekly wage. When the employment commenced
23 otherwise than the beginning of a calendar week, the calendar week and wages earned during that
24 week shall be excluded in making the above computation. When the employment previous to
25 injury as provided above is computed to be less than a net period of two (2) weeks, the weekly
26 wage shall be considered to be equivalent to the average weekly wage prevailing in the same or
27 similar employment at the time of injury except that when an employer has agreed to pay a
28 certain hourly wage to the worker, then the hourly wage so agreed upon shall be the hourly wage
29 for the injured worker and his or her average weekly wage shall be computed by multiplying that
30 hourly wage by the number of weekly hours agreed upon in the contract of hire.

31 (ii) In the event the injured employee had concurrent employment with one or more
32 additional employers at the time of injury, the average weekly wage shall be calculated for the
33 twenty-six (26) calendar weeks preceding the week in which the employee was injured upon the
34 basis of wages earned from all those employers in the period involved by totaling the gross

1 earnings from all the employers and dividing by the number of usable weeks the employee
2 actually was employed by that employer, in the same manner as if the employee had worked for a
3 single employer; provided, in the case of apportionment of liability among successive employers
4 pursuant to § 28-34-8, the employer in whose employ the injury was sustained shall be liable for
5 all benefits provided by chapters 29 -- 38 of this title. In the case that the injured employee's other
6 employer is a full-time employer, the average weekly wage shall be calculated according to
7 subdivision (1) for the thirteen (13) calendar weeks immediately preceding the week in which he
8 or she was injured. Calculations for part-time employment shall be calculated separately for the
9 twenty-six (26) calendar weeks immediately preceding the week of injury. A schedule of
10 computation of the average weekly wage in compliance with this section shall be a necessary part
11 of the memorandum of agreement required by § 28-35-1.

12 (iii) Where the employer is accustomed to paying the employee a sum to cover any
13 special expense incurred by the employee by the nature of the employment, that sum shall not be
14 reckoned as part of the employee's wages, earnings, or salary. The fact that an employee has
15 suffered a previous injury or received compensation for a previous injury shall not preclude
16 compensation for a later injury or for death. In determining the compensation for the later injury
17 or death, the average weekly wage shall be any sum that will reasonably represent the employee's
18 earning capacity at the time of the later injury, in the employment in which he or she was working
19 at that time, and shall be derived according to, and subject to, the limitations of the provisions of
20 this section; provided, that in computing the average weekly wages earned subsequent to the first
21 injury, the time worked and wages earned prior to that injury shall be excluded.

22 SECTION 2. This act shall take effect upon passage and shall apply to those persons
23 receiving or eligible for weekly compensation for partial incapacity as of the date of passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION -
BENEFITS

1 This act would increase weekly workers' compensation for partial incapacity, from
2 seventy-five percent (75%) to eighty-five percent (85%) of spendable base wage calculation
3 before injury and spendable base wage calculation after injury; it would also eradicate the
4 calculations reducing benefits of degrees of impairment and would mandate that overtime
5 earnings in the twenty-six (26) weeks preceding the injury, be averaged into the employees wage
6 calculation.

7 This act would take effect upon passage and would apply to those persons receiving or
8 eligible for weekly compensation for partial incapacity as of the date of passage.

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