

2017 -- S 0917 SUBSTITUTE A

LC002709/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

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

Introduced By: Senator P Fogarty

Date Introduced: May 25, 2017

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-33-18.3 of the General Laws in Chapter 28-33 entitled  
2 "Workers' Compensation - Benefits" is hereby amended to read as follows:

3 **28-33-18.3. Continuation of benefits -- Partial incapacity.**

4 (a) (1) For all injuries occurring on or after September 1, 1990, in those cases where the  
5 employee has received a notice of intention to terminate partial-incapacity benefits pursuant to §  
6 28-33-18, the employee, or his or her duly authorized representative, may file with the workers'  
7 compensation court a petition for continuation of benefits on forms prescribed by the workers'  
8 compensation court. In any proceeding before the workers' compensation court on a petition for  
9 continuation of partial-incapacity benefits, where the employee demonstrates by a fair  
10 preponderance of the evidence that his or her partial incapacity poses a material hindrance to  
11 obtaining employment suitable to his or her limitation, partial-incapacity benefits shall continue.  
12 ~~For injuries on and after July 1, 2023, "material hindrance" is defined to include only~~  
13 ~~compensable injuries causing a greater than sixty five percent (65%) degree of functional~~  
14 ~~impairment and/or disability.~~ Any period of time for which the employee has received benefits  
15 for total incapacity shall not be included in the calculation of the three hundred and twelve-week  
16 (312) period.

17 (2) ~~The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1,~~  
18 ~~2023.~~

1 (b) (1) Where any employee's incapacity is partial and has extended for more than three  
2 hundred and twelve (312) weeks and the employee has proved an entitlement to continued  
3 benefits under subsection (a), payments made to these incapacitated employees shall be increased  
4 annually on the tenth (10th) day of May thereafter so long as the employee remains incapacitated.  
5 The increase shall be by an amount equal to the total percentage increase in the annual Consumer  
6 Price Index, United States City Average for Urban Wage Earners and Clerical Workers, as  
7 formulated and computed by the Bureau of Labor Statistics of the United States Department of  
8 Labor for the period of March 1 to February 28 each year.

9 (2) "Index", as used in this section, refers to the Consumer Price Index, United States  
10 City Average for Urban Wage Earners and Clerical Workers, as that index was formulated and  
11 computed by the Bureau of Labor Statistics of the United States Department of Labor.

12 (3) The annual increase shall be based upon the percentage increase, if any, in the  
13 Consumer Price Index for the month of a given year, over the index for February the previous  
14 year. Thereafter, increases shall be made on May 10 annually, based upon the percentage  
15 increase, if any, in the Consumer Price Index for the period of March 1 to February 28.

16 (4) The computations in this section shall be made by the director of labor and training  
17 and promulgated to insurers and employers making payments required by this section. Increases  
18 shall be paid by insurers and employers without further order of the court. If payment payable  
19 under this section is not mailed within fourteen (14) days after the employer or insurer has been  
20 notified by publication in a newspaper of general circulation in the state it becomes due, there  
21 shall be added to the unpaid payment an amount equal to twenty percent (20%) of it, to be paid at  
22 the same time as, but in addition to, the payment.

23 (5) This section applies only to payment of weekly indemnity benefits to employees as  
24 described in subdivision (b)(1) and does not apply to specific compensation payments for loss of  
25 use or disfigurement or payment of dependency benefits or any other benefits payable under the  
26 workers' compensation act.

27 (c) No petitions for commutation shall be allowed or entertained in those cases where an  
28 employee is receiving benefits pursuant to this section.

29 SECTION 2. Sections 28-53-2 and 28-53-7 of the General Laws in Chapter 28-53  
30 entitled "Rhode Island Uninsured Employers Fund" are hereby amended to read as follows:

31 **28-53-2. Establishment -- Sources -- Administration.**

32 (a) There shall be established within the department of labor and training a special  
33 restricted receipt account to be known as the Rhode Island uninsured employers fund. The fund  
34 shall be capitalized from excise taxes assessed against uninsured employers pursuant to the

1 provisions of § 28-53-9 of this chapter and from general revenues appropriated by the legislature.  
2 Beginning in state fiscal year ending ~~June 30, 2017~~ June 30, 2018, the legislature may appropriate  
3 up to two million dollars (\$2,000,000) in general revenue funds annually for deposit into the  
4 Rhode Island uninsured employers fund.

5 (b) All moneys in the fund shall be mingled and undivided. The fund shall be  
6 administered by the director of the department of labor and training, or his or her designee, but in  
7 no case shall the director incur any liability beyond the amounts paid into and earned by the fund.

8 (c) All amounts owed to the uninsured employers fund from illegally uninsured  
9 employers are intended to be excise taxes and as such, all ambiguities and uncertainties are to be  
10 resolved in favor of a determination that such assessments are excise taxes.

11 **28-53-7. Payments to employees of uninsured employers.**

12 (a) Where it is determined that the employee was injured in the course of employment  
13 while working for an employer who fails to maintain a policy of workers' compensation insurance  
14 as required by § 28-36-1 et seq., the uninsured employers fund shall pay the benefits to which the  
15 injured employee would be entitled pursuant to chapters 29 to 38 of this title subject to the  
16 limitations set forth herein.

17 (b) The workers' compensation court shall hear all petitions for payment from the fund  
18 pursuant to § 28-30-1 et seq.; provided, however, that the uninsured employers fund and the  
19 employer shall be named as parties to any petition seeking payment of benefits from the fund.

20 (c) Where an employee is deemed to be entitled to benefits from the uninsured employers  
21 fund, the fund shall pay benefits for disability and medical expenses as provided pursuant to  
22 chapters 29 to 38 of this title except that the employee shall not be entitled to receive benefits for  
23 loss of function and disfigurement pursuant to the provisions of § 28-33-19.

24 (d) The fund shall pay cost, counsel, and witness fees, as provided in § 28-35-32, to any  
25 employee who successfully prosecutes any petitions for compensation; petitions for medical  
26 expenses; petitions to amend a pretrial order or memorandum of agreement; and all other  
27 employee petitions; and to employees who successfully defend, in whole or in part, proceedings  
28 seeking to reduce or terminate any and all workers' compensation benefits; provided, however,  
29 that the attorney's fees awarded to counsel who represent the employee in petitions for lump-sum  
30 commutation filed pursuant to § 28-33-25, or in the settlement of disputed cases pursuant to § 28-  
31 33-25.1, shall be limited to the maximum amount paid to counsel who serve as court-appointed  
32 attorneys in workers' compensation proceedings as established by rule or order of the Rhode  
33 Island supreme court.

34 (e) In the event that the uninsured employer makes payment of any monies to the

1 employee to compensate the employee for lost wages or medical expenses, the fund shall be  
2 entitled to a credit for all such monies received by, or on behalf of, the employee against any  
3 future benefits payable directly to the employee.

4 (f) This section shall apply to injuries that occur on or after ~~July 1, 2017~~ [July 1, 2018](#).

5 SECTION 3. The title of Chapter 28-38 of the General Laws entitled "Dr. John E. Donley  
6 Rehabilitation Center" is hereby amended to read as follows:

7 ~~CHAPTER 28-38~~

8 ~~Dr. John E. Donley Rehabilitation Center~~

9 [CHAPTER 28-38](#)

10 [CHIEF JUDGE ROBERT F. ARRIGAN REHABILITATION CENTER](#)

11 SECTION 4. Sections 28-38-23 and 28-38-24 of the General Laws in Chapter 28-38  
12 entitled "Dr. John E. Donley Rehabilitation Center" are hereby amended to read as follows:

13 **28-38-23. Name change.**

14 The name of the curative centre in the department shall be the ~~Dr. John E. Donley~~ [Chief](#)  
15 [Judge Robert F. Arrigan](#) rehabilitation center.

16 **28-38-24. Reference to curative centre.**

17 Wherever in any existing law reference is made to the curative centre, and wherever in an  
18 existing law the term "state curative centre" or "curative centre" or "the centre," "[the Donley](#)  
19 [Center](#)" or "[the Dr. John E. Donley Rehabilitation Center](#)", as variously used, refers to the  
20 curative centre in the department, that reference and that term shall be deemed to have reference  
21 to the ~~Dr. John E. Donley~~ [Chief Judge Robert F. Arrigan](#) rehabilitation center.

22 SECTION 5. This act shall take effect upon 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

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1           This act would repeal the provisions of the workers' compensation law that provides that  
2 for injuries on and after July 1, 2023, "material hindrance" is defined to include only  
3 compensable injuries causing a greater than sixty-five percent (65%) degree of functional  
4 impairment and/or disability. The act would also change the name of the Donley Center to the  
5 Chief Judge Robert F. Arrigan rehabilitation center.

6           This act would take effect upon passage.

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