

2018 -- S 2593

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

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

Introduced By: Senators Lombardi, McCaffrey, Lynch Prata, Jabour, and Nesselbush

Date Introduced: March 01, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-33-2, 28-33-12, 28-33-19, 28-33-22 and 28-33-44 of the
2 General Laws in Chapter 28-33 entitled "Workers' Compensation - Benefits" are hereby amended
3 to read as follows:

4 **28-33-2. Injuries occasioned by willful intent or intoxication.**

5 No compensation shall be allowed for the injury or death of an employee occasioned by
6 his or her willful intention to bring about the injury or death of himself or herself or another,
7 where it is proved that his or her injury or death was occasioned by that conduct, or that the injury
8 or death resulted from his or her intoxication or unlawful use of controlled substances as defined
9 in chapter 28 of title 21. If the employer establishes that, at the time of the injury or death or
10 immediately following the injury or death, the employee had positive blood test results reflecting
11 the presence of alcohol, or another controlled substance as defined in chapter 28 of title 21, which
12 was not prescribed by an authorized medical practitioner or was not used in accordance with the
13 prescribed use of the drug, it shall be presumed that the employee was intoxicated at the time of
14 the injury and that intoxication occasioned the injury. Once the employer has produced such
15 positive test results, the burden of proof shall be on the employee, to overcome the presumptions,
16 by establishing that the employee was not intoxicated at the time of the injury and that
17 intoxication did not occasion the injury or death.

18 **28-33-12. Death benefits payable to dependents.**

1 (a) (1) If death results from the injury, the employer shall pay the dependents of the
2 employee wholly dependent upon his or her earnings for support at the time of his or her injury or
3 death, whichever is the greater in number, a weekly payment equal to the rate that would have
4 been payable for total incapacity to the deceased employee under the provisions of § 28-33-17,
5 except as provided in this section in case the dependent is the surviving spouse or child under the
6 age of eighteen (18) of that employee.

7 (2) If the dependent is a surviving spouse, or surviving spouse upon whom there is
8 dependent one or more children of the deceased employee including an adopted child or stepchild
9 under the age of eighteen (18) years or over that age but physically or mentally incapacitated
10 from earning, the employer shall pay the surviving spouse the weekly rate for total incapacity the
11 deceased employee would have been entitled to receive under the provisions of § 28-33-17 plus
12 forty dollars (\$40.00) per week for each dependent child.

13 (3) "Child" within the meaning of this section also includes any child of the injured
14 employee conceived but not born at the time of the employee's injury, and the compensation
15 provided for in this section shall be payable on account of any child from the date of its birth.

16 (b) Upon the remarriage or death of the surviving spouse or if there is no surviving
17 spouse then upon the death of the injured employee, the compensation payable under this chapter
18 shall subsequently be paid to those dependent child or children of the injured employee, and if
19 there is more than one child the compensation shall be divided equally among them and the
20 compensation shall be not more than the weekly rate for total incapacity due the injured employee
21 under the provisions of § 28-33-17 for the dependent child plus forty dollars (\$40.00) for each
22 additional dependent child.

23 (c) If the employee leaves dependents only partly dependent upon his or her earnings for
24 support at the time of his or her injury or death, the employer shall pay that dependent from the
25 date of the injury or death, whichever is greater in number, a weekly compensation equal to the
26 amount of the average weekly contribution by the employee to the partial dependents, not
27 exceeding the weekly payments provided in this section for the benefit of wholly dependent
28 persons.

29 (d) When weekly payments have been made to an injured employee before his or her
30 death, the compensation to dependents shall begin from the date of the last of those payments;
31 and provided, that if the deceased leaves no dependents at the time of the injury or death, the
32 employer shall not be liable to pay compensation under chapters 29 -- 38 of this title except as
33 specifically provided in § 28-33-16.

34 (e) Except in the case of a dependent child physically or mentally incapacitated from

1 earning, dependency benefits for each child shall terminate when that dependent child attains his
2 or her eighteenth (18th) birthday; provided, that the payment of dependency benefits to a
3 dependent child over the age of eighteen (18) years shall continue as long as that child is
4 satisfactorily enrolled as a full-time student in an educational institution or an educational facility
5 duly accredited or approved by the appropriate state educational authorities at the time of
6 enrollment. Those payments shall not be continued beyond the age of twenty-three (23) years.

7 (f) When a surviving spouse without dependent children remarries, benefits payable
8 under this section shall cease on the date of the remarriage.

9 (g) A surviving spouse entitled to benefits under this section shall receive an annual cost
10 of living increase [as referred to in § 28-33-17\(f\)\(1\)](#) ~~of four percent (4%) on every anniversary of~~
11 ~~the date of death for so long as he or she is eligible for benefits under this section.~~

12 **28-33-19. Additional compensation for specific injuries.**

13 (a) (1) In case of the following specified injuries there shall be paid in addition to all
14 other compensation provided for in chapters 29 to 38 of this title a weekly payment equal to one-
15 half (1/2) of the average weekly earnings of the injured employee, but in no case more than ninety
16 dollars (\$90.00) nor less than forty-five dollars (\$45.00) per week. In case of the following
17 specified injuries that occur on or after January 1, 2012, there shall be paid in addition to all other
18 compensation provided for in chapters 29 to 38 of this title a weekly payment equal to one-half
19 (1/2) of the average weekly earnings of the injured employee, but in no case more than one
20 hundred eighty dollars (\$180) nor less than ninety dollars (\$90.00) per week. Payment made
21 under this section shall be made in a one time payment unless the parties otherwise agree.
22 Payment shall be mailed within fourteen (14) days of the entry of a decree, order, or agreement of
23 the parties:

24 (i) For the loss by severance of both hands at or above the wrist, or for the loss of the arm
25 at or above the elbow or for the loss of the leg at or above the knee, or both feet at or above the
26 ankle, or of one hand and one foot, or the entire and irrecoverable loss of the sight of both eyes,
27 or the reduction to one-tenth (1/10) or less of normal vision with glasses, for a period of three
28 hundred twelve (312) weeks; provided, that for the purpose of this chapter the Snellen chart
29 reading (20/200) shall equal one-tenth (1/10) of normal vision or a reduction of ninety percent
30 (90%) of the vision. Additionally, any loss of visual performance including, but not limited to,
31 loss of binocular vision, other than direct visual acuity may be considered in evaluating eye loss;

32 (ii) For the loss by severance of either arm at or above the elbow, or of either leg at or
33 above the knee, for a period of three hundred twelve (312) weeks;

34 (iii) For the loss by severance of either hand at or above the wrist for a period of two

1 hundred forty-four (244) weeks;

2 (iv) For the entire and irrecoverable loss of sight of either eye, or the reduction to one-
3 tenth (1/10) or less of normal vision with glasses, or for loss of binocular vision for a period of
4 one hundred sixty (160) weeks;

5 (v) For the loss by severance of either foot at or above the ankle, for a period of two
6 hundred five (205) weeks;

7 (vi) For the loss by severance of the entire distal phalange of either thumb for a period of
8 thirty-five (35) weeks; and for the loss by severance at or above the second joint of either thumb,
9 for a period of seventy-five (75) weeks;

10 (vii) For the loss by severance of one phalange of either index finger, for a period of
11 twenty-five (25) weeks; for the loss by severance of at least two (2) phalanges of either index
12 finger, for a period of thirty-two (32) weeks; for the loss by severance of at least three (3)
13 phalanges of either index finger, for a period of forty-six (46) weeks;

14 (viii) For the loss by severance of one phalange of the second finger of either hand, for a
15 period of sixteen (16) weeks; for the loss by severance of two (2) phalanges of the second finger
16 of either hand, for a period of twenty-two (22) weeks; for the loss by severance of three (3)
17 phalanges of the second finger on either hand, for a period of thirty (30) weeks;

18 (ix) For the loss by severance of one phalange of the third finger of either hand, for a
19 period of twelve (12) weeks; for the loss by severance of two (2) phalanges of the third finger of
20 either hand, for a period of eighteen (18) weeks; for the loss by severance of three (3) phalanges
21 of a third finger of either hand, for a period of twenty-five (25) weeks;

22 (x) For the loss by severance of one phalange of the fourth finger of either hand, for a
23 period of ten (10) weeks; for the loss by severance of two (2) phalanges of the fourth finger of
24 either hand, for a period of fourteen (14) weeks; for the loss by severance of three (3) phalanges
25 of a fourth finger of either hand, for a period of twenty (20) weeks;

26 (xi) For the loss by severance of one phalange of the big toe on either foot, for a period of
27 twenty (20) weeks; for the loss by severance of two (2) phalanges of the big toe of either foot, for
28 a period of thirty-eight (38) weeks; for the loss by severance at or above the distal joint of any
29 other toe than the big toe, for a period of ten (10) weeks for each such toe;

30 (xii) For partial loss by severance for any of the injuries specified in paragraphs (1)(i) --
31 (1)(xi) of this subsection, proportionate benefits shall be paid for the period of time that the
32 partial loss by severance bears to the total loss by severance.

33 (2) Where any bodily member or portion of it has been rendered permanently stiff or
34 useless, compensation in accordance with the above schedule shall be paid as if the member or

1 portion of it had been completely severed; provided, that if the stiffness or uselessness is less than
2 total, then compensation shall be paid for that period of weeks in proportion to the applicable
3 period where the member or portion of it has been completely severed as the instant percentage of
4 stiffness or uselessness bears to the total stiffness or total uselessness of the bodily members or
5 portion of them.

6 (3) In case of the following specified injuries there shall be paid in addition to all other
7 compensation provided for in chapters 29 -- 38 under this title a weekly payment equal to one-
8 half (1/2) of the average weekly earnings of the injured employee, but in no case more than ninety
9 dollars (\$90.00) nor less than forty-five dollars (\$45.00) per week. Payment under this subsection
10 shall be made in a one time payment unless the parties otherwise agree. Payment shall be mailed
11 within fourteen (14) days of the entry of a decree, order, or agreement of the parties:

12 (i) For permanent disfigurement of the body the number of weeks may not exceed five
13 hundred (500) weeks, which sum shall be payable in a one time payment within fourteen (14)
14 days of the entry of a decree, order, or agreement of the parties in addition to all other sums under
15 this section wherever it is applicable.

16 (4) (i) Loss of hearing due to industrial noise is recognized as an occupational disease for
17 purposes of chapters 29 -- 38 of this title and occupational deafness is defined to be a loss of
18 hearing in one or both ears due to prolonged exposure to harmful noise in employment. Harmful
19 noise means sound capable of producing occupational deafness.

20 (ii) Hearing loss shall be evaluated pursuant to protocols established by the workers'
21 compensation medical advisory board. All treatment consistent with this subsection shall be
22 consistent with the protocols established by the workers' compensation medical advisory board
23 subject to § 28-33-5.

24 (iii) If the employer has conducted baseline screenings within one (1) year of exposure to
25 harmful noise to evaluate the extent of an employee's pre-existing hearing loss, the causative
26 factor shall be apportioned based on the employee's pre-existing hearing loss and subsequent
27 occupational hearing loss, and the compensation payable to the employee shall only be that
28 portion of the compensation related to the present work-related exposure.

29 (iv) There shall be payable as permanent partial disability for total occupational deafness
30 of one ear, seventy-five (75) weeks of compensation; for total occupational deafness of both ears,
31 two hundred forty-four (244) weeks of compensation; for partial occupational deafness in one or
32 both ears, compensation shall be paid for any periods that are proportionate to the relation which
33 the hearing loss bears to the amount provided in this subdivision for total loss of hearing in one or
34 both ears, as the case may be. For the complete loss of hearing for either ear due to external

1 trauma or by other mechanism, acuity loss shall be paid pursuant to this subsection.

2 (v) No benefits shall be granted for tinnitus, psychogenic hearing loss, congenital hearing
3 loss, recruitment or hearing loss above three thousand (3,000) hertz.

4 (vi) The provisions of this subsection and the amendments insofar as applicable to
5 hearing loss shall be operative as to any occupational hearing loss that occurs on or after
6 September 1, 2003, except for acuity hearing loss related to a single event which shall become
7 effective upon passage.

8 (vii) If previous hearing loss, whether occupational or not, is established by an
9 audiometric examination or other competent evidence, whether or not the employee was exposed
10 to assessable noise exposure within one year preceding the test, the employer is not liable for the
11 previous loss, nor is the employer liable for a loss for which compensation has previously been
12 paid or awarded. The employer is liable only for the difference between the percent of
13 occupational hearing loss determined as of the date of the audiometric examination conducted by
14 a certified audiometric technician using an audiometer which meets the specifications established
15 by the American National Standards Institute (ANSI 3.6-1969, ri973) used to determine
16 occupational hearing loss and the percentage of loss established by the baseline audiometric
17 examination. An amount paid to an employee for occupational hearing loss by any other
18 employer shall be credited against compensation payable by the subject employer for the hearing
19 loss. The employee shall not receive in the aggregate greater compensation from all employers
20 for occupational hearing loss than that provided in this section for total occupational hearing loss.
21 A payment shall not be paid to an employee unless the employee has worked in excessive noise
22 exposure employment for a total period of at least one hundred eighty (180) days for the
23 employer for whom compensation is claimed.

24 (viii) No claim for occupational deafness may be filed until six (6) months separation
25 from the type of noisy work for the last employer in whose employment the employee was at any
26 time during the employment exposed to harmful noise.

27 (ix) The total compensation due for hearing loss is recovered from the employer who last
28 employed the employee in whose employment the employee was last exposed to harmful noise
29 and the insurance carrier, if any, on the risk when the employee was last so exposed, and if the
30 occupational hearing loss was contracted while the employee was in the employment of a prior
31 employer, and there was no baseline testing by the last employer, the employer and insurance
32 carrier which is made liable for the total compensation as provided by this section may petition
33 the worker's compensation court for an apportionment of the compensation among the several
34 employers which since the contraction of the hearing loss have employed the employee in a noisy

1 environment.

2 (b) Where payments are required to be made under more than one clause of this section,
3 payments shall be made in a one time payment unless the parties otherwise agree. Payment shall
4 be mailed within fourteen (14) days of the entry of a decree, order, or agreement of the parties.

5 (c) Payments pursuant to this section, except paragraph (a)(3)(ii) of this section, shall be
6 made only after an employee's condition as relates to loss of use has reached maximum medical
7 improvement as defined in § 28-29-2(8) and as found pursuant to § 28-33-18(b).

8 (d) An employer or insurer shall be entitled to recover any overpayments made for
9 indemnity benefits, by a set-off against payments due to an employee for loss of use or
10 disfigurement paid pursuant to this section.

11 **28-33-22. Minors employed in violation of law.**

12 (a) If, at the time of the injury, the injured employee is a minor employed in violation of
13 any law of this state or of the United States relating to the employment of minors, then the
14 compensation payable shall be treble the amount which would have been payable if that minor
15 had been legally employed; provided, however, notwithstanding any law to the contrary, such
16 additional compensation shall be paid solely by the employer as a penalty and not by or through
17 coverage under a policy of workers' compensation insurance, and no policy of workers'
18 compensation insurance shall be deemed to provide coverage for such additional compensation.

19 (b) In fixing the amount of any compensation under chapters 29 -- 38 of this title due
20 allowance shall be made for any sum which the employer may have paid to any injured minor
21 employee or to his dependents on account of the injury, except those sums that the employer may
22 have expended or directed to be expended for medical, surgical, or hospital service.

23 **28-33-44. Continuation of health insurance benefits.**

24 (a) No employer shall cancel but shall be obligated to continue to provide any employee's
25 health insurance benefits for a period of two (2) years from the date of the employee's receiving
26 weekly compensation benefits pursuant to a preliminary determination or a decision of the
27 workers' compensation court, or the filing at the department of a memorandum of agreement or
28 notice of direct payment for injuries occurring on or before February 28, 1986. The provisions of
29 this section shall not apply if:

30 (1) The employee is no longer receiving compensation pursuant to a preliminary
31 determination or a decision of the workers' compensation court;

32 (2) Has accepted suitable alternative employment;

33 (3) Fails to pay any contribution toward the health care benefits that he or she was
34 required to pay prior to the injury;

1 (4) A petition for a commutation or a structured settlement, as defined in § 28-33-25, is
2 granted;

3 (5) The employee is a beneficiary of an equivalent health insurance policy of his or her
4 spouse; or

5 (6) The employee is employed in the construction industry and is a participant in a multi-
6 employer welfare plan as defined in the Employee Retirement Income Security Act of 1974, 29
7 U.S.C. § 1002 et seq., and which the Internal Revenue Service has determined under the Internal
8 Revenue Code, 26 U.S.C. § 101 et seq., is tax exempt as to contributions received and as to
9 benefits received by its participants.

10 (b) In the event any employer fails to comply with the provisions of this section, then the
11 employer, and not its workers' compensation insurance carrier, shall be liable for hospital and
12 medical costs that would have been paid by the hospital or medical insurance plan afforded the
13 employee had he or she been covered by the plan.

14 (c) The provisions of this section shall only apply to claims for injuries sustained on or
15 after July 1, 1984.

16 SECTION 2. Section 28-36-5 of the General Laws in Chapter 28-36 entitled "Workers'
17 Compensation - Insurance" is hereby amended to read as follows:

18 **28-36-5. Policy provisions as to liability of employer and insurer.**

19 Every policy shall cover the entire liability of the employer under chapters 29 -- 38 of this
20 title, except for appeals from an order of the retirement board filed pursuant to the provisions of
21 Rhode Island General Law § 45-21.2-9, and for the penalty provisions retained in § 28-33-22 and
22 the provisions of §§ 28-33-44 and 28-33-47, and shall contain an agreement by the insurer to the
23 effect that the insurer shall be directly and primarily liable to the employee and, in the event of
24 his death, to his or her dependents, to pay to him, her, or them the compensation, if any, for which
25 the employer is liable.

26 SECTION 3. 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

1 This act would allow for employers, in workers' compensation actions, to shift the legal
2 burden to employees to prove they were not intoxicated at the time of injury or death, after a
3 showing by the employer that the employee had a positive test for intoxicating substances at or
4 immediately following the injury or death. It would also provide an annual cost of living increase
5 for surviving spouses in workers' compensation actions based upon the Consumer Price Index and
6 exclude any employee from receiving workers' compensation benefits during any period of their
7 imprisonment, including home confinement. This act would also allow for employers or insurers
8 to recover overpayment made for indemnity benefits by set-off payments due for loss of use or
9 disfigurement. This act would also require that employers bear sole responsibility for treble
10 damages, as a penalty, if the injured employee is a minor employed in violation of any law.

11 This act would take effect upon passage.

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