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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - EMPLOYMENT SECURITY -
SEASONAL EMPLOYEES

Introduced By: Representatives McEntee, Craven, and O'Brien

Date Introduced: February 14, 2019

Referred To: House Labor

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.**

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

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

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

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

1 for benefits; provided, that notwithstanding any provision of chapters 42 -- 44 of this title to the
2 contrary, for the benefit years beginning on or after October 4, 1992, whenever an individual who
3 has received workers' compensation benefits is entitled to reinstatement under § 28-33-47, but the
4 position to which reinstatement is sought does not exist or is not available, the individual's base
5 period shall be determined as if the individual filed for benefits on 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 § 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
23 with 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 amount", effective July 6, 2014, means earnings by the individual in an
27 amount equal to at least eight (8) times the individual's weekly benefit rate.

28 (11) "Credit week", prior to July 1, 2012, means any week within an individual's base
29 period in which that individual earned wages amounting to at least twenty (20) times the
30 minimum hourly wage as defined in chapter 12 of this title for performing services in
31 employment for one or more employers subject to chapters 42 -- 44 of this title, and for the period
32 July 1, 2012, through July 5, 2014, means any week within an individual's base period in which
33 that individual earned wages amounting to at least his or her weekly benefit rate for performing
34 services in employment for one or more employers subject to chapters 42 -- 44 of this title;

1 (12) "Crew leader", for the purpose of subdivision (19) of this section, means an
2 individual who:

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

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

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

9 (13) "Director" means the head of the department of labor and training or his or her
10 authorized representative;

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

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

17 (16) "Employer" means:

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

19 (ii) Any employing unit that for some portion of a day on and after January 1, 1956, has,
20 or had, in employment, within any calendar year, one or more individuals; except, however, for
21 "domestic service employment", as defined in subdivision (14) of this section;

22 (iii) For the effective period of its election pursuant to § 28-42-12, any other employing
23 unit that has elected to become subject to chapters 42 -- 44 of this title;

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

31 (17) "Employing unit" means any person, partnership, association, trust, estate, or
32 corporation, whether domestic or foreign, or its legal representative, trustee in bankruptcy,
33 receiver, or trustee, or the legal representative of a deceased person, that has, or had, in his or her
34 employ, one or more individuals. For the purposes of subdivision (14) of this section, a private

1 home shall be considered an employing unit only if the person for whom the domestic service
2 was performed paid cash remuneration of one thousand dollars (\$1,000) or more in any calendar
3 quarter in the current calendar year, or the preceding calendar year, to individuals employed in
4 that domestic service in that private home;

5 (18)(i) "Employment", subject to §§ 28-42-4 -- 28-42-10, means service, including
6 service in interstate commerce, performed for wages, or under any contract of hire, written or
7 oral, express or implied; provided, that service performed shall also be deemed to constitute
8 employment for all the purposes of chapters 42 -- 44 of this title if performed by an individual in
9 the employ of a nonprofit organization as described in subdivision (25) of this section, except as
10 provided in § 28-42-8(7).

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

16 (iii) Employment not to include owners. Employment does not include services
17 performed by sole proprietors (owners), partners in a partnership, limited liability company --
18 single member filing as a sole proprietor with the IRS, or members of a limited liability company
19 filing as a partnership with the IRS.

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

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

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

28 (ii) That individual is not an employee of that other person within the meaning of
29 subdivision (15) of this section; and

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

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

34 (B) That other person shall be treated as having paid cash remuneration to that individual

1 in an amount equal to the amount of cash remuneration paid to that individual by the crew leader
2 (either on his or her own behalf or on behalf of that other person) for the service in agricultural
3 labor performed for that other person;

4 (20) "Employment office" means a free, public-employment office, or its branch,
5 operated by the director or by this state as part of a system of free, public-employment offices, or
6 any other agency that the director may designate with the approval of the Social Security
7 Administration;

8 (21) "Fund" means the employment security fund established by this chapter;

9 (22) "Governmental entity" means state and local governments in this state and includes
10 the following:

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

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

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

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

18 (24)(i) "Institution of higher education" means an educational institution in this state that:

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

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

23 (C) Provides:

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

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

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

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

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

32 (25) "Nonprofit organization" means an organization, or group of organizations, as
33 defined in 26 U.S.C. § 501(c)(3), that is exempt from income tax under 26 U.S.C. § 501(a);

34 (26)(i) "Partial unemployment". An employee shall be deemed partially unemployed in

1 any week of less than full-time work if he or she fails to earn in wages for that week an amount
2 equal to the weekly benefit rate for total unemployment to which he or she would be entitled if
3 totally unemployed and eligible.

4 (ii) For the purposes of this subdivision and subdivision (28) of this section, "Wages"
5 includes only that part of remuneration for any work that is in excess of one-fifth (1/5) of the
6 weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar
7 (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one
8 week, and "services" includes only that part of any work for which remuneration in excess of
9 one-fifth (1/5) of the weekly benefit rate for total unemployment, rounded to the next lower
10 multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed
11 and eligible in any one week is payable; provided, that nothing contained in this paragraph shall
12 permit any individual to whom remuneration is payable for any work performed in any week in
13 an amount equal to or greater than his or her weekly benefit rate to receive benefits under this
14 subdivision for that week.

15 (iii) Notwithstanding anything contained to the contrary in this subdivision, "Services",
16 as used in this subdivision and in subdivision (28) of this section, does not include services
17 rendered by an individual under the exclusive supervision of any agency of this state, or any of its
18 political subdivisions, by which the services are required solely for the purpose of affording
19 relief, support, or assistance to needy individuals performing those services, or services
20 performed by members of the national guard and organized reserves in carrying out their duties in
21 weekly drills as members of those organizations. "Wages", as used in this subdivision and in
22 subdivision (28) of this section, does not include either remuneration received by needy
23 individuals for rendering the aforementioned services when that remuneration is paid exclusively
24 from funds made available for that purpose out of taxes collected by this state or any of its
25 political subdivisions, or remuneration received from the federal government by members of the
26 national guard and organized reserves, as drill pay, including longevity pay and allowances;

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

29 (28) "Seasonal employer" means an employer that, because of climatic conditions or the
30 nature of the product sold or service provided, customarily operates all or a functionally distinct
31 occupation within its business only during a regularly recurring period or periods of less than
32 twenty (20) weeks for all seasonal periods during a calendar year and only includes an employer
33 who voluntarily submits a written application to the director. Such application shall be submitted
34 at least sixty (60) days prior to the beginning of the season.

1 (29) "Seasonal employment" means services performed for wages for a seasonal
2 employer during the seasonal period in the employer's seasonal operations, after the effective date
3 of the director's seasonal determination with respect to the seasonal employer.

4 (30) "Seasonal employee" means an individual who:

5 (i) Has been employed by a seasonal employer in seasonal employment during a
6 regularly recurring period or periods of less than twenty (20) weeks in a calendar year for all
7 seasonal periods, as determined by the director; and

8 (ii) Has been hired for a specific temporary seasonal period as determined by the director;
9 and

10 (iii) Has been notified in writing at the time hired, or immediately following the seasonal
11 determination by the department of labor and training, whichever is later:

12 (A) That the individual is performing services in seasonal employment for a seasonal
13 employer; and

14 (B) That the individual's employment is limited to the beginning and ending dates of the
15 employer's seasonal period as determined by the department of labor and training.

16 (31) "Seasonal determination" means a determination made by the director, as to the
17 seasonal nature of the employer, the normal seasonal period or periods of the employer, and the
18 seasonal operations of the employer covered by such determination.

19 ~~(28)~~(32) "Total unemployment." An individual shall be deemed totally unemployed in
20 any week in which he or she performs no services (as used in subdivision (26) of this section) and
21 for which he or she earns no wages (as used in subdivision (26) of this section), and in which he
22 or she cannot reasonably return to any self-employment in which he or she has customarily been
23 engaged;

24 ~~(29)~~(33) "Wages" means all remuneration paid for personal services on or after January
25 1, 1940, including commissions and bonuses and the cash value of all remuneration paid in any
26 medium other than cash, and all other remuneration that is subject to a tax under a federal law
27 imposing a tax against which credit may be taken for contributions required to be paid into a state
28 unemployment fund. Gratuities customarily received by an individual in the course of his or her
29 employment from persons other than his or her employing unit shall be treated as wages paid by
30 his or her employing unit. The reasonable cash value of remuneration paid in any medium other
31 than cash, and the reasonable amount of gratuities, shall be estimated and determined in
32 accordance with rules prescribed by the director; except that for the purpose of this subdivision
33 and of §§ 28-43-1 -- 28-43-14, this term does not include:

34 (i) That part of remuneration that is paid by an employer to an individual with respect to

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

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

- 15 (A) Retirement;
- 16 (B) Sickness or accident disability;
- 17 (C) Medical and hospitalization expenses in connection with sickness or accident
18 disability; or
- 19 (D) Death; provided, that the employee has not the:

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

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

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

- 30 (I) The tax imposed upon an employee under 26 U.S.C. § 3101; or
 - 31 (II) Any payment required from an employee under chapters 42 -- 44 of this title.
- 32 (iii) Any amount paid by an employee, or an amount paid by an employer, under a benefit
33 plan organized under Internal Revenue Code [26 U.S.C. § 125].

34 ~~(30)~~(34) "Week" means the seven-day (7) calendar week beginning on Sunday at 12:01

1 A.M. and ending on Saturday at 12:00 A.M. midnight.

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

4 **28-44-72. Seasonal employment.**

5 (a) No waiting period shall be allowed and no benefits shall be paid to an individual on
6 the basis of service performed in seasonal employment as defined by § 28-42-3 unless the claim
7 is filed within the operating period of the seasonal employment. If the claim is filed outside the
8 operating period of the seasonal employment, benefits may be paid on the basis of nonseasonal
9 wages only.

10 (b) An employer shall provide the director with such information necessary to make a
11 seasonal determination defined by § 28-42-3. Until the director makes a seasonal determination,
12 no employer or employee may be considered seasonal.

13 (c) Any employer notified of a seasonal determination may file an appeal regarding a
14 seasonal determination and obtain review of the determination. Such appeal and review shall be
15 in accordance with § 28-44-39.

16 (d) Whenever an employer is determined to be a seasonal employer, the following
17 provisions apply:

18 (1) The seasonal determination becomes effective the first day of the calendar quarter
19 commencing after the date of the seasonal determination.

20 (2) The seasonal determination does not affect any benefit rights of seasonal workers
21 with respect to employment before the effective date of the seasonal determination.

22 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 - EMPLOYMENT SECURITY -
SEASONAL EMPLOYEES

1 This act would create a seasonal employment designation for purposes of unemployment
2 benefits, which would allow employers hiring employees for less than twenty (20) weeks to apply
3 for a seasonal determination by the director of the department of labor and training. Seasonal
4 employees would not be eligible to collect unemployment insurance for wages earned during the
5 term of their seasonal employment.

6 This act would take effect upon passage.

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