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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 - WORKERS' COMPENSATION

Introduced By: Representatives Williams, Fellela, Alzate, Millea, and McKiernan

Date Introduced: May 22, 2019

Referred To: House Labor

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 28-33-18, 28-33-22, 28-33-25 and 28-33-44 of the General Laws  
2 in Chapter 28-33 entitled "Workers' Compensation - Benefits" are hereby amended to read as  
3 follows:

4           **28-33-18. Weekly compensation for partial incapacity.**

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

12           (b) For all injuries occurring on or after September 1, 1990, where an employee's  
13 condition has reached maximum medical improvement and the incapacity for work resulting from  
14 the injury is partial, while the incapacity for work resulting from the injury is partial, the  
15 employer shall pay the injured employee a weekly compensation equal to seventy percent (70%)  
16 of the weekly compensation rate as set forth in subsection (a) of this section. The court may, in its  
17 discretion, take into consideration the performance of the employee's duty to actively seek  
18 employment in scheduling the implementation of the reduction. The provisions of this subsection  
19 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 **28-33-22. Minors employed in violation of law.**

32 (a) If, at the time of the injury, the injured employee is a minor employed in violation of  
33 any law of this state or of the United States relating to the employment of minors, then the  
34 compensation payable shall be treble the amount which would have been payable if that minor

1 had been legally employed.

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

6 (c) Whenever the workers' compensation insurance carrier for the employer is obligated  
7 to pay treble the amount which would have been payable if that minor had been legally  
8 employed, the workers' compensation insurance carrier shall have a complete right of  
9 indemnification to the extent the additional benefits are paid against the employer for the  
10 additional benefits paid above and beyond the usual workers' compensation indemnity benefit.

11 **28-33-25. Settlement for lump sum or structured-type payment.**

12 (a)(1) ~~In case payments have continued for not less than six (6) months, the~~ The parties  
13 may petition the workers' compensation court for an order approving a settlement of the future  
14 liability for a lump sum or structured-type periodic payment over a period of time.

15 (2)(i) In considering the petition, a judge shall give due weight to the fact that it is the  
16 policy of this chapter that compensation be paid weekly.

17 (ii) The petition shall be considered by a judge of the court and may be granted where it  
18 is shown to the satisfaction of the court that the payment of a lump sum or structured-type  
19 payment in lieu of future weekly payments will be in the best interest of all parties including the  
20 employee, employer, insurance carrier, and where applicable, the workers' compensation  
21 administrative fund and the center for Medicare and Medicaid services (CMS) as their interests  
22 may appear. Any proposed settlement that exceeds one hundred four (104) weeks of  
23 compensation for partial incapacity may be rejected by the chief judge in his or her discretion.  
24 The employee shall be entitled to a finding amortizing the net settlement over his or her life  
25 expectancy.

26 (iii) In determining whether the settlement is in the best interest of all parties, the judge  
27 may refer the employee for a rehabilitation evaluation pursuant to the provisions of § 28-33-41.

28 (3) Upon payment, the employer and insurer shall be entitled to a duly executed release,  
29 which fully and finally absolves and discharges the employer and insurer from any and all  
30 liability arising out of the injury.

31 (b) The provisions of this section shall be strictly construed and all hearings for  
32 commutation shall be conducted in open session.

33 (c) No case may be settled to a lump sum or structured-type periodic payment while the  
34 Rhode Island temporary disability insurance fund and/or the department of social and

1 rehabilitative services has a claim for payments made under chapter 41 of this title unless  
2 agreement is made to pay any claim from the lump sum or structured-type periodic payments.

3 (d) Attorneys' fees shall be fixed by the court, but in no event shall any attorney's fee for  
4 representing an employee in connection with a petition brought pursuant to this section exceed a  
5 sum equal to twenty percent (20%) of the lump sum or twenty percent (20%) of the structured-  
6 type periodic payment reduced to present day value.

7 (e) No case shall be settled for a lump sum or structured-type periodic payment unless it  
8 is placed upon the record in open session, that the employer, if insured, has been advised by the  
9 insurer or its agent of the potential effect of the settlement on its workers' compensation premium,  
10 and has the opportunity to appear and state its disapproval of the settlement.

11 (f) Settlements must be paid within fourteen (14) days of entry of an order to pay or the  
12 date(s) upon which payment(s) is/are due pursuant to a court order, and a penalty of one hundred  
13 dollars (\$100) shall be assessed for every day payment is delinquent.

14 **28-33-44. Continuation of health insurance benefits.**

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

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

23 (2) Has accepted suitable alternative employment;

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

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

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

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

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

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

7 SECTION 2. Section 28-35-14 of the General Laws in Chapter 28-35 entitled "Workers'  
8 Compensation - Procedure" is hereby amended to read as follows:

9 **28-35-14. Copies of petition to respondents.**

10 Upon filing with the workers' compensation court of any petition, stating the general  
11 nature of any claim as to which any dispute or controversy may have arisen, the petitioner shall  
12 serve a copy of the petition and its attachments on the respondent or respondents in accordance  
13 with the workers' compensation court rules of practice.

14 SECTION 3. Sections 28-35-46, 28-35-47, 28-35-48, 28-35-49, 28-35-50 and 28-35-51  
15 of the General Laws in Chapter 28-35 entitled "Workers' Compensation - Procedure" are hereby  
16 repealed.

17 ~~**28-35-46. Notice of intent to discontinue, suspend, or reduce payments -- Filing --**~~  
18 ~~**Form.**~~

19 ~~Before an employer may discontinue, suspend, or reduce compensation payments~~  
20 ~~whether they are being received under an agreement, memorandum of agreement, award, order,~~  
21 ~~finding, or decree, or when suitable alternative employment has been offered to the employee~~  
22 ~~pursuant to § 28-33-18.2, the employer shall notify the court and the employee of his or her~~  
23 ~~intention to discontinue, suspend, or reduce payments and the reason for doing so by filing with~~  
24 ~~the court an affidavit setting forth the factual basis for filing the petition to review along with a~~  
25 ~~copy of the medical reports upon which the employer seeks to justify the discontinuance,~~  
26 ~~suspension, or reduction in payments. A copy of the affidavit and medical report shall be~~  
27 ~~forwarded to the employee. The notice of intention to discontinue, suspend, or reduce payments~~  
28 ~~must be given fifteen (15) days prior to the proposed date of discontinuance, suspension, or~~  
29 ~~reduction; provided, that where an employee has returned to work at an average weekly wage~~  
30 ~~equal to or in excess of that which he or she was earning at the time of his or her injury, not~~  
31 ~~including overtime, the notice of intention to discontinue, suspend, or reduce the payments~~  
32 ~~provided for in this section may be given five (5) days prior to the proposed date of~~  
33 ~~discontinuance. Notices shall be in substantially the following form:~~

34 ~~Notice to Workers' Compensation Court and Employee of Intention to Discontinue,~~

~~Suspend, or Reduce Payment~~

~~You are hereby notified that the undersigned employer intends on the ..... day of ..... 20....., to discontinue, suspend, or reduce the payments of compensation to the above named employee for the following reasons, to wit:~~

~~(1) Employee has returned to work at an average weekly wage equal to or in excess of that which he or she was earning at the time of his or her injury, not including overtime.~~

~~(2) Employee has returned to work and is earning wages in the sum of ..... dollars weekly.~~

~~(3) Employee has been discharged by his or her treating physician on the ..... day of ..... 20.....~~

~~**28-35-47. Wage transcript supporting allegation of return to work.**~~

~~Where the notice of intention to discontinue, suspend, or reduce payments of compensation alleges that the employee has returned to work at an average weekly wage equal to or in excess of that which he or she was earning at the time of his or her injury, not including overtime, or has returned to work for wages less than he or she was earning at the time of the injury, the notice shall contain a signed wage transcript signed by the treasurer of the employer, or other appropriate official, setting forth the number of hours worked, the rate of pay, and the wages earned during the period relied upon corroborating the allegation. Provided, that indemnity benefits may be discontinued if the employer files with the department of labor and training a wage transcript showing that the employee has returned to work for at least two (2) consecutive weeks at a salary equal to or in excess of that which he or she was earning, not including overtime, at the time of his or her injury. Notice of the filing shall be sent to the employee and/or the employee's legal representative. If the employee files an objection within two (2) weeks, the matter shall be referred to the court for disposition pursuant to § 28-35-51, and the court may order benefits reinstated.~~

~~**28-35-48. Medical report on ability to return to work.**~~

~~Where the notice of intention to discontinue, suspend, or reduce payments of compensation alleges that the employee is able to return to work, the notice shall be supported by a report of a treating physician.~~

~~**28-35-49. Medical examination on ability to return to light work.**~~

~~Where the notice of intention to discontinue, suspend, or reduce payments of compensation alleges that the employee is able to return to light selected work, the notice shall be supported by a report of a treating physician.~~

~~**28-35-50. Resumption of payments on change of status.**~~

1           ~~If subsequent to the filing of any notice provided for in this chapter there is any change of~~  
2 ~~status of the employee which would affect the right to discontinue, reduce, or suspend~~  
3 ~~compensation payments under §§ 28-35-39—28-35-53, such as, the unwarranted discharge of the~~  
4 ~~employee, a reduction of wages suffered by an employee while he or she is still unable to perform~~  
5 ~~the work which he or she did at the time of his or her injury, or the inability of the employee to~~  
6 ~~continue work due to his or her injury, between the time of the filing of the notice and the time of~~  
7 ~~suspension under the notice, or the time of rendering of a decision following a hearing before the~~  
8 ~~workers' compensation court, payments in accordance with the existing agreement, award,~~  
9 ~~finding, or decree shall be resumed or continued.~~

10           ~~**28-35-51. Review of discontinuance, suspension, or reduction -- Disputed cases.**~~

11           ~~Upon receipt of notice of intention to discontinue, suspend, or reduce compensation~~  
12 ~~payments, the court shall notify the employee that he or she has a right to dispute the claim of the~~  
13 ~~employer or insurance carrier and assign the matter for a mandatory pre-trial conference on the~~  
14 ~~date set forth in the notice pursuant to § 28-35-20.~~

15           SECTION 4. 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

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1           This act would provide that, in the event an employee hires a minor who is injured in the  
2 course of his or her employment, that the insurance carrier would be liable only for the actual  
3 statutory amount of the benefits due and payable if the employer was not a minor, and that the  
4 employer would be responsible for the remainder of the punitive treble damage amount due and  
5 payable to the minor employee.

6           The act would also clarify that an employer, and not the insurance carrier, would be liable  
7 for the continuation of health benefits and costs relating to an injured employee, should the  
8 employer violate any provision of the general laws pertaining to such benefits and costs.

9           Finally, the act would repeal certain provisions of the general laws which are either  
10 obsolete or inapplicable to the current general laws governing workers' compensation benefits.

11           This act would take effect upon passage.

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