

2019 -- S 0505

LC001804

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION
BENEFITS

Introduced By: Senators Lombardi, Archambault, Conley, Lynch Prata, and McCaffrey

Date Introduced: February 27, 2019

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-33-2, 28-33-19, 28-33-20.1, 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 shows that, at the time of the injury or death or
10 immediately following the injury or death, the employee had positive test results reflecting the
11 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 made a showing of
15 such positive test results, the burden of proof shall be on the employee to overcome the
16 presumption by establishing that the employee was not intoxicated at the time of the injury, or
17 that intoxication did not occasion the injury or death.

18 **28-33-19. Additional compensation for specific injuries.**

1 (a)(1) In case of the following specified injuries there shall be paid in addition to all other
2 compensation provided for in chapters 29 to 38 of this title a weekly payment equal to one-half
3 (1/2) of the average weekly earnings of the injured employee, but in no case more than ninety
4 dollars (\$90.00) nor less than forty-five dollars (\$45.00) per week. In case of the following
5 specified injuries that occur on or after January 1, 2012, there shall be paid in addition to all other
6 compensation provided for in chapters 29 to 38 of this title a weekly payment equal to one-half
7 (1/2) of the average weekly earnings of the injured employee, but in no case more than one
8 hundred eighty dollars (\$180) nor less than ninety dollars (\$90.00) per week. Payment made
9 under this section shall be made in a one time payment unless the parties otherwise agree.
10 Payment shall be mailed within fourteen (14) days of the entry of a decree, order, or agreement of
11 the parties:

12 (i) For the loss by severance of both hands at or above the wrist, or for the loss of the arm
13 at or above the elbow or for the loss of the leg at or above the knee, or both feet at or above the
14 ankle, or of one hand and one foot, or the entire and irrecoverable loss of the sight of both eyes,
15 or the reduction to one-tenth (1/10) or less of normal vision with glasses, for a period of three
16 hundred twelve (312) weeks; provided, that for the purpose of this chapter the Snellen chart
17 reading (20/200) shall equal one-tenth (1/10) of normal vision or a reduction of ninety percent
18 (90%) of the vision. Additionally, any loss of visual performance including, but not limited to,
19 loss of binocular vision, other than direct visual acuity may be considered in evaluating eye loss;

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

22 (iii) For the loss by severance of either hand at or above the wrist for a period of two
23 hundred forty-four (244) weeks;

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

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

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

32 (vii) For the loss by severance of one phalange of either index finger, for a period of
33 twenty-five (25) weeks; for the loss by severance of at least two (2) phalanges of either index
34 finger, for a period of thirty-two (32) weeks; for the loss by severance of at least three (3)

1 phalanges of either index finger, for a period of forty-six (46) weeks;

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

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

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

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

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

21 (2) Where any bodily member or portion of it has been rendered permanently stiff or
22 useless, compensation in accordance with the above schedule shall be paid as if the member or
23 portion of it had been completely severed; provided, that if the stiffness or uselessness is less than
24 total, then compensation shall be paid for that period of weeks in proportion to the applicable
25 period where the member or portion of it has been completely severed as the instant percentage of
26 stiffness or uselessness bears to the total stiffness or total uselessness of the bodily members or
27 portion of them.

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

34 (i) For permanent disfigurement of the body the number of weeks may not exceed five

1 hundred (500) weeks, which sum shall be payable in a one time payment within fourteen (14)
2 days of the entry of a decree, order, or agreement of the parties in addition to all other sums under
3 this section wherever it is applicable.

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

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

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

17 (iv) There shall be payable as permanent partial disability for total occupational deafness
18 of one ear, seventy-five (75) weeks of compensation; for total occupational deafness of both ears,
19 two hundred forty-four (244) weeks of compensation; for partial occupational deafness in one or
20 both ears, compensation shall be paid for any periods that are proportionate to the relation which
21 the hearing loss bears to the amount provided in this subdivision for total loss of hearing in one or
22 both ears, as the case may be. For the complete loss of hearing for either ear due to external
23 trauma or by other mechanism, acuity loss shall be paid pursuant to this subsection.

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

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

30 (vii) If previous hearing loss, whether occupational or not, is established by an
31 audiometric examination or other competent evidence, whether or not the employee was exposed
32 to assessable noise exposure within one year preceding the test, the employer is not liable for the
33 previous loss, nor is the employer liable for a loss for which compensation has previously been
34 paid or awarded. The employer is liable only for the difference between the percent of

1 occupational hearing loss determined as of the date of the audiometric examination conducted by
2 a certified audiometric technician using an audiometer which meets the specifications established
3 by the American National Standards Institute (ANSI 3.6-1969, ri973) used to determine
4 occupational hearing loss and the percentage of loss established by the baseline audiometric
5 examination. An amount paid to an employee for occupational hearing loss by any other
6 employer shall be credited against compensation payable by the subject employer for the hearing
7 loss. The employee shall not receive in the aggregate greater compensation from all employers
8 for occupational hearing loss than that provided in this section for total occupational hearing loss.
9 A payment shall not be paid to an employee unless the employee has worked in excessive noise
10 exposure employment for a total period of at least one hundred eighty (180) days for the
11 employer for whom compensation is claimed.

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

15 (ix) The total compensation due for hearing loss is recovered from the employer who last
16 employed the employee in whose employment the employee was last exposed to harmful noise
17 and the insurance carrier, if any, on the risk when the employee was last so exposed, and if the
18 occupational hearing loss was contracted while the employee was in the employment of a prior
19 employer, and there was no baseline testing by the last employer, the employer and insurance
20 carrier which is made liable for the total compensation as provided by this section may petition
21 the worker's compensation court for an apportionment of the compensation among the several
22 employers which since the contraction of the hearing loss have employed the employee in a noisy
23 environment.

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

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

30 (d) An employer or insurer shall be entitled to recover any overpayments made for
31 indemnity benefits by set-off against payments due to an employee for loss of use or
32 disfigurement pursuant to this section.

33 **28-33-20.1. Computation of earnings for recurrence -- Burden of employee to**
34 **establish recurrence.**

1 (a) In the event a person collecting benefits under this chapter, regardless of the date of
2 injury, has returned to employment for a period of twenty-six (26) weeks or more and suffers a
3 recurrence of the injury which precipitated the person collecting benefits under this chapter, the
4 average weekly wage shall be ascertained by dividing the gross wages earned by the injured
5 worker in employment by the employer in whose service he or she is injured during the thirteen
6 (13) calendar weeks immediately preceding the week in which he or she suffered the recurrence,
7 by the number of calendar weeks during which, or any portion of which, the worker was actually
8 employed by that employer. In making this computation, absence for seven (7) consecutive
9 calendar days, although not in the same calendar week, shall be considered as absence for a
10 calendar week.

11 (b) For all petitions filed to prove recurrence or decrease of incapacity to work, regardless
12 of the date of injury, ~~the employee must document that the incapacity has increased or returned~~
13 ~~without the need for the employee~~ neither party shall be required to document a comparative
14 change of condition.

15 **28-33-22. Minors employed in violation of law.**

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

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

27 **28-33-44. Continuation of health insurance benefits.**

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

34 (1) The employee is no longer receiving compensation pursuant to a preliminary

- 1 determination or a decision of the workers' compensation court;
- 2 (2) Has accepted suitable alternative employment;
- 3 (3) Fails to pay any contribution toward the health care benefits that he or she was
4 required to pay prior to the injury;
- 5 (4) A petition for a commutation or a structured settlement, as defined in § 28-33-25, is
6 granted;
- 7 (5) The employee is a beneficiary of an equivalent health insurance policy of his or her
8 spouse; or
- 9 (6) The employee is employed in the construction industry and is a participant in a multi-
10 employer welfare plan as defined in the Employee Retirement Income Security Act of 1974, 29
11 U.S.C. § 1002 et seq., and which the Internal Revenue Service has determined under the Internal
12 Revenue Code, 26 U.S.C. § 101 et seq., is tax exempt as to contributions received and as to
13 benefits received by its participants.

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

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

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

22 **28-36-5. Policy provisions as to liability of employer and insurer.**

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

30 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 in workers' compensation actions for employers 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 substance at or
4 immediately following the injury or death. This act would also allow for employers or insurers to
5 recover overpayments made for indemnity benefits by set-off payments for loss of use or
6 disfigurement. Finally it would also require that employers bear sole responsibility for treble
7 damages if the injured employee is a minor employed in violation of any law.

8 This act would take effect upon passage.

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