STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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AN ACT

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

Introduced By: Senator Mark P. McKenney

Date Introduced: February 27, 2019

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

SECTION 1. Section 28-42-3 of the General Laws in Chapter 28-42 entitled “Employment Security - General Provisions” is hereby amended to read as follows:


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

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

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

(3) "Base period", with respect to an individual's benefit year, means the first four (4), of the most recently completed five (5), calendar quarters immediately preceding the first day of an individual's benefit year. For any individual's benefit year, and for any individual deemed monetarily ineligible for benefits for the "base period" as defined in this subdivision, the department shall make a re-determination of entitlement based upon the alternate, base period that consists of the last four (4) completed calendar quarters immediately preceding the first day of the claimant's benefit year. Notwithstanding anything contained to the contrary in this subdivision, the base period shall not include any calendar quarter previously used to establish a valid claim.
for benefits; provided, that notwithstanding any provision of chapters 42 -- 44 of this title to the contrary, for the benefit years beginning on or after October 4, 1992, whenever an individual who has received workers' compensation benefits is entitled to reinstatement under § 28-33-47, but the position to which reinstatement is sought does not exist or is not available, the individual's base period shall be determined as if the individual filed for benefits on the date of the injury;

(4) "Benefit" means the money payable to an individual as compensation for his or her wage losses due to unemployment as provided in these chapters;

(5) "Benefit credits" means the total amount of money payable to an individual as benefits, as determined by § 28-44-9;

(6) "Benefit rate" means the money payable to an individual as compensation, as provided in chapters 42 -- 44 of this title, for his or her wage losses with respect to any week of total unemployment;

(7) "Benefit year", with respect to any individual who does not already have a benefit year in effect and who files a valid claim for benefits, means fifty-two (52) consecutive, calendar weeks, the first of which shall be the week containing the day as of which he or she first files a valid claim in accordance with regulations adopted as hereinafter prescribed; provided, that the benefit year shall be fifty-three (53) weeks if the filing of a new, valid claim would result in overlapping any quarter of the base period of a prior new claim previously filed by the individual. In no event shall a new benefit year begin prior to the Sunday next following the end of the old benefit year;

(8) "Calendar quarter" means the period of three (3) consecutive, calendar months ending March 31, June 30, September 30, and December 31; or the equivalent thereof, in accordance with regulations as subsequently prescribed;

(9) "Contributions" means the money payments to the state employment security fund required by those chapters;

(10) "Credit amount", effective July 6, 2014, means earnings by the individual in an amount equal to at least eight (8) times the individual's weekly benefit rate.

(11) "Credit week", prior to July 1, 2012, means any week within an individual's base period in which that individual earned wages amounting to at least twenty (20) times the minimum hourly wage as defined in chapter 12 of this title for performing services in employment for one or more employers subject to chapters 42 -- 44 of this title, and for the period July 1, 2012, through July 5, 2014, means any week within an individual's base period in which that individual earned wages amounting to at least his or her weekly benefit rate for performing services in employment for one or more employers subject to chapters 42 -- 44 of this title;
(12) "Crew leader", for the purpose of subdivision (19) of this section, means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;
(ii) Pays (either on his or her own behalf or on behalf of that other person) the individuals so furnished by him or her for the service in agricultural labor performed by them; and
(iii) Has not entered into a written agreement with that other person (farm operator) under which that individual (crew leader) is designated as an employee of that other person (farm operator).

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

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

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

(16) "Employer" means:

(i) Any employing unit that was an employer as of December 31, 1955;
(ii) Any employing unit that for some portion of a day on and after January 1, 1956, has, or had, in employment, within any calendar year, one or more individuals; except, however, for "domestic service employment", as defined in subdivision (14) of this section;
(iii) For the effective period of its election pursuant to § 28-42-12, any other employing unit that has elected to become subject to chapters 42 -- 44 of this title;
(iv) Any employing unit not an employer by reason of any other paragraph of this subdivision for which, within either the current or preceding calendar year, service is, or was, performed with respect to which that employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into this state's employment security fund; or which, as a condition for approval of chapters 42 -- 44 of this title for full tax credit against the tax imposed by the Federal Unemployment Tax Act, 26 U.S.C. § 3301 et seq., is required, pursuant to that act, to be an "employer" under chapters 42 -- 44 of this title;

(17) "Employing unit" means any person, partnership, association, trust, estate, or corporation, whether domestic or foreign, or its legal representative, trustee in bankruptcy, receiver, or trustee, or the legal representative of a deceased person, that has, or had, in his or her employ, one or more individuals. For the purposes of subdivision (14) of this section, a private
home shall be considered an employing unit only if the person for whom the domestic service was performed paid cash remuneration of one thousand dollars ($1,000) or more in any calendar quarter in the current calendar year, or the preceding calendar year, to individuals employed in that domestic service in that private home;

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

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

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

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

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

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

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

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

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

(B) That other person shall be treated as having paid cash remuneration to that individual.
in an amount equal to the amount of cash remuneration paid to that individual by the crew leader
either on his or her own behalf or on behalf of that other person for the service in agricultural
labor performed for that other person;

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

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

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

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

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

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

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

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

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

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

(C) Provides:

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

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

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

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

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

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

(26)(i) "Partial unemployment". An employee shall be deemed partially unemployed in
any week of less than full-time work if he or she fails to earn in wages for that week an amount equal to the weekly benefit rate for total unemployment to which he or she would be entitled if totally unemployed and eligible.

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

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

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

(28) "Seasonal employer" means an employer that, because of climatic conditions or the nature of the product sold or service provided, customarily operates all or a functionally distinct occupation within its business only during a regularly recurring period or periods of less than twenty (20) weeks for all seasonal periods during a calendar year and only includes an employer who voluntarily submits a written application to the director. Such application shall be submitted at least sixty (60) days prior to the beginning of the season.
(29) "Seasonal employment" means services performed for wages for a seasonal employer during the seasonal period in the employer's seasonal operations, after the effective date of the director's seasonal determination with respect to the seasonal employer.

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

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

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

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

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

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

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

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

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

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

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

(A) Retirement;

(B) Sickness or accident disability;

(C) Medical and hospitalization expenses in connection with sickness or accident
disability; or

(D) Death; provided, that the employee has not the:

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

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

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

(I) The tax imposed upon an employee under 26 U.S.C. § 3101; or

(II) Any payment required from an employee under chapters 42 -- 44 of this title.

(iii) Any amount paid by an employee, or an amount paid by an employer, under a benefit
plan organized under Internal Revenue Code [26 U.S.C. § 125].

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

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

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

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

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

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

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

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

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

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

SECTION 3. This act shall take effect upon passage.
EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
AN ACT
RELATING TO LABOR AND LABOR RELATIONS - EMPLOYMENT SECURITY - SEASONAL EMPLOYEES

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

This act would take effect upon passage.