

2023 -- H 6079

LC001892

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

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

Introduced By: Representatives Sanchez, Morales, Felix, and Cardillo

Date Introduced: March 03, 2023

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-33-47 of the General Laws in Chapter 28-33 entitled "Workers'
2 Compensation — Benefits" is hereby amended to read as follows:

3 **28-33-47. Reinstatement of injured worker.**

4 (a) A worker who has sustained a compensable injury shall be reinstated by the worker's
5 employer to the worker's former position of employment upon written demand for reinstatement if
6 the position exists and is available and the worker is not disabled from performing the duties of the
7 position with reasonable accommodation made by the employer in the manner in which the work
8 is to be performed. A workers' former position is "available" even if that position has been filled
9 by a replacement while the injured worker was absent as a result of the worker's compensable
10 injury. If the former position is not available, the worker shall be reinstated in any other existing
11 position that is vacant and suitable. A certificate by the treating physician that the physician
12 approves the worker's return to the worker's regular employment or other suitable employment
13 shall be prima facie evidence that the worker is able to perform the duties.

14 (b) The right of reinstatement shall be subject to the provisions for seniority rights and
15 other employment restrictions contained in a valid collective bargaining agreement between the
16 employer and a representative of the employer's employees, and nothing shall exempt any
17 employer from or excuse full compliance with any applicable provisions of the Americans with
18 Disabilities Act, 42 U.S.C. § 12101 et seq., and chapter 87 of title 42.

1 (c) Notwithstanding subsection (a) of this section:

2 (1) The right to reinstatement to the worker's former position under this section terminates
3 upon any of the following:

4 (i) A medical determination by the treating physician, impartial medical examiner, or
5 comprehensive independent healthcare review team that the worker cannot, at maximum medical
6 improvement, return to the former position of employment or any other existing position with the
7 same employer that is vacant and suitable;

8 (ii) The approval by the workers' compensation court of a vocational rehabilitation
9 program for the worker to train the worker for alternative employment with another employer;

10 (iii) The worker's acceptance of suitable employment with another employer after reaching
11 maximum medical improvement;

12 (iv) The worker's refusal of a bona fide offer from the employer of light duty employment
13 or suitable alternative employment, prior to reaching maximum medical improvement;

14 (v) The expiration of ten (10) days from the date that the worker is notified by the insurer
15 or self-insured employer by mail at the address to which the weekly compensation benefits are
16 mailed that the worker's treating physician has released the worker for employment unless the
17 worker requests reinstatement within that time period;

18 (vi) The expiration of thirty (30) days after the employee reaches maximum medical
19 improvement or concludes or ceases to participate in an approved program of rehabilitation, or one
20 year from the date of injury, whichever is sooner, provided, in the event a petition to establish
21 liability for an injury is filed, but not decided within one year of the date of injury, within twenty-
22 one (21) days from the first finding of liability. Notwithstanding the foregoing, where the employee
23 is participating in an approved program of rehabilitation specifically designed to provide the
24 employee with the ability to perform a job for which he or she would be eligible under subsection
25 (a) of this section, the right of reinstatement shall terminate when the employee concludes or ceases
26 to participate in the program or eighteen (18) months from the date of injury, whichever is sooner;

27 (vii) Except where otherwise provided under a collective bargaining agreement, the
28 approval by the court of a settlement pursuant to chapters 29 — 38 of this title.

29 (2) The right to reinstatement under this section does not apply to:

30 (i) A worker hired on a temporary basis;

31 (ii) A worker employed in a seasonal occupation;

32 (iii) A worker who works out of a hiring hall operating pursuant to a collective bargaining
33 agreement;

34 (iv) A worker whose employer employs nine (9) or fewer workers at the time of the

1 worker's injury; or

2 (v) A worker who is on a probationary period of less than ninety-one (91) days.

3 (d) Any violation of this section is deemed an unlawful employment practice. If the
4 employee applies for reinstatement under this section and the employer in violation of this section
5 refuses to reinstate the employee, the workers' compensation court is authorized to order
6 reinstatement and award back pay and the cost of fringe benefits lost during the period as
7 appropriate. Determinations of reinstatement disputes shall be rendered by the workers'
8 compensation court in accordance with this section and chapters 29 — 38 of this title, and the rules
9 of practice of the workers' compensation court.

10 (e) When an employee is entitled to reinstatement under this section, but the position to
11 which reinstatement is sought does not exist or is not available, the employee may file for
12 unemployment benefits as if then laid off from that employment, and unemployment benefits shall
13 be calculated pursuant to § 28-42-3(4); provided, that an employee cannot collect both workers'
14 compensation indemnity benefits and unemployment benefits under this section.

15 (f) The education division of the department of labor and training shall provide information
16 to employees who receive benefits under this title of the provisions of this section.

17 (g) Any requests for reinstatement determinations pending before the director prior to
18 September 1, 2000, will remain at the department for resolution. Any requests after this date will
19 be heard by the workers' compensation court.

20 (h) Any employee who has sustained a work-related injury and is capable of performing
21 the essential functions of a particular job, or who would be capable of performing the essential
22 functions of such job with reasonable accommodations, shall be deemed to be an employee entitled
23 to compensation according to § 28-33-1.

24 (i) No employer or duly authorized agent of an employer shall discharge, refuse to hire or
25 in any other manner discriminate against an employee because the employee has exercised a right
26 afforded by this chapter, or who has testified or in any manner cooperated with an inquiry or
27 proceeding pursuant to this chapter, unless the employee knowingly participated in a fraudulent
28 proceeding. Any person claiming to be aggrieved by a violation of this chapter may initiate
29 proceedings in the appropriate venue for which the alleged violation occurred. An employer found
30 to have violated this section shall be exclusively liable to pay to the employee lost wages, shall
31 grant the employee suitable employment, and shall reimburse such reasonable attorneys' fees
32 incurred in the protection of rights granted as shall be determined by the court. The court may grant
33 whatever equitable relief it deems necessary to protect rights granted by this section.

34 (j) In the event that any right set forth in this section is inconsistent with an applicable

1 collective bargaining agreement, such agreement shall prevail. An employee may not otherwise
2 waive rights granted by this section.

3 (k) Upon a determination by the director that a request for data maintained by the
4 department is intended to be used in such a manner as to violate the purposes of this section, the
5 director may find that the disclosure of such data constitutes an unwarranted invasion of personal
6 privacy. Nothing in this section shall be construed to prohibit an insurer's right to obtain any
7 information held by the department regarding any employee who has filed a claim against such
8 insurer.

9 SECTION 2. This act shall take effect upon passage.

=====
LC001892
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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

1 This act would prevent employers from discriminating against an employee because the
2 employee has exercised a right afforded by the workers' compensation statute. Also, this act would
3 define the improper disclosure of employee's data as an unwarranted invasion of personal privacy.

4 This act would take effect upon passage.

=====
LC001892
=====