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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION

Introduced By: Senator Michael J. McCaffrey

Date Introduced: February 16, 2012

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-29-2 and 28-29-6.1 of the General Laws in Chapter 28-29  
2 entitled "Workers' Compensation - General Provisions" are hereby amended to read as follows:

3 **28-29-2. Definitions.** -- In chapters 29 -- 38 of this title, unless the context otherwise  
4 requires:

5 (1) "Department" means the department of labor and training.

6 (2) "Director" means the director of labor and training or his or her designee unless  
7 specifically stated otherwise.

8 (3) (i) "Earnings capacity" means the weekly straight time earnings which an employee  
9 could receive if the employee accepted an actual offer of suitable alternative employment.  
10 Earnings capacity can also be established by the court based on evidence of ability to earn,  
11 including, but not limited to, a determination of the degree of functional impairment and/or  
12 disability, that an employee is capable of employment. The court may, in its discretion, take into  
13 consideration the performance of the employee's duty to actively seek employment in scheduling  
14 the implementation of the reduction. The employer need not identify particular employment  
15 before the court can direct an earnings capacity adjustment. In the event that an employee returns  
16 to light duty employment while partially disabled, an earnings capacity shall not be set based  
17 upon actual wages earned until the employee has successfully worked at light duty for a period of  
18 at least thirteen (13) weeks.

19 (ii) As used under the provisions of this title, "functional impairment" means an

1 anatomical or functional abnormality existing after the date of maximum medical improvement as  
2 determined by a medically or scientifically demonstrable finding and based upon the Sixth (6th)  
3 edition of the American Medical Association's Guide to the Evaluation of Permanent Impairment  
4 or comparable publications of the American Medical Association.

5 (iii) In the event that an employee returns to employment at an average weekly wage  
6 equal to the employee's pre-injury earnings exclusive of overtime, the employee will be presumed  
7 to have regained his/her earning capacity.

8 (4) "Employee" means any person who has entered into the employment of or works  
9 under contract of service or apprenticeship with any employer, except that in the case of a city or  
10 town other than the city of Providence it shall only mean that class or those classes of employees  
11 as may be designated by a city, town, or regional school district in a manner provided in this  
12 chapter to receive compensation under chapters 29 -- 38 of this title. Any person employed by the  
13 state of Rhode Island, except for sworn employees of the Rhode Island State Police, or by the  
14 Rhode Island Airport Corporation who is otherwise entitled to the benefits of chapter 19 of title  
15 45 shall be subject to the provisions of chapters 29 -- 38 of this title for all case management  
16 procedures and dispute resolution for all benefits. The term "employee" does not include any  
17 individual who is a shareholder or director in a corporation, general or limited partners in a  
18 general partnership, a registered limited liability partnership, a limited partnership, or partners in  
19 a registered limited liability limited partnership, or any individual who is a member in a limited  
20 liability company. These exclusions do not apply to shareholders, directors and members who  
21 have entered into the employment of or who work under a contract of service or apprenticeship  
22 within a corporation or a limited liability company. The term "employee" also does not include a  
23 sole proprietor, independent contractor, or a person whose employment is of a casual nature, and  
24 who is employed other than for the purpose of the employer's trade or business, or a person  
25 whose services are voluntary or who performs charitable acts, nor shall it include the members of  
26 the regularly organized fire and police departments of any town or city; provided, however, that it  
27 shall include the members of the police and aircraft rescue and firefighting (ARFF) units of the  
28 Rhode Island Airport Corporation. Whenever a contractor has contracted with the state, a city,  
29 town, or regional school district any person employed by that contractor in work under contract  
30 shall not be deemed an employee of the state, city, town, or regional school district as the case  
31 may be. Any person who on or after January 1, 1999, was an employee and became a corporate  
32 officer shall remain an employee, for purposes of these chapters, unless and until coverage under  
33 this act is waived pursuant to subsection 28-29-8(b) or section 28-29-17. Any person who is  
34 appointed a corporate officer between January 1, 1999 and December 31, 2001, and was not

1 previously an employee of the corporation, will not be considered an employee, for purposes of  
2 these chapters, unless that corporate officer has filed a notice pursuant to subsection 28-29-19(b).  
3 In the case of a person whose services are voluntary or who performs charitable acts, any benefit  
4 received, in the form of monetary remuneration or otherwise, shall be reportable to the  
5 appropriate taxation authority but shall not be deemed to be wages earned under contract of hire  
6 for purposes of qualifying for benefits under chapters 29 -- 38 of this title. Any reference to an  
7 employee who had been injured shall, where the employee is dead, include a reference to his or  
8 her dependents as defined in this section, or to his or her legal representatives, or, where he or she  
9 is a minor or incompetent, to his or her conservator or guardian. A "seasonal occupation" means  
10 those occupations in which work is performed on a seasonal basis of not more than sixteen (16)  
11 weeks.

12 (5) "Employer" includes any person, partnership, corporation, or voluntary association,  
13 and the legal representative of a deceased employer; it includes the state, and the city of  
14 Providence. It also includes each city, town, and regional school district in the state that votes or  
15 accepts the provisions of chapters 29 -- 38 of this title in the manner provided in this chapter.

16 (6) "General or special employer":

17 (i) "General employer" includes but is not limited to temporary help companies and  
18 employee leasing companies and means a person who for consideration and as the regular course  
19 of its business supplies an employee with or without vehicle to another person.

20 (ii) "Special employer" means a person who contracts for services with a general  
21 employer for the use of an employee, a vehicle, or both.

22 (iii) Whenever there is a general employer and special employer wherein the general  
23 employer supplies to the special employer an employee and the general employer pays or is  
24 obligated to pay the wages or salaries of the supplied employee, then, notwithstanding the fact  
25 that direction and control is in the special employer and not the general employer, the general  
26 employer, if it is subject to the provisions of the Workers' Compensation Act or has accepted that  
27 Act, shall be deemed to be the employer as set forth in subdivision (5) of this section and both the  
28 general and special employer shall be the employer for purposes of sections 28-29-17 and 28-29-  
29 18. However, the special employee shall not be deemed to be the employer for purposes of  
30 section 28-29-20.

31 (iv) Effective January 1, 2003, whenever a general employer enters into a contract or  
32 arrangement with a special employer to supply an employee or employees for work, the special  
33 employer shall require an insurer generated insurance coverage certification, on a form prescribed  
34 by the department, demonstrating Rhode Island workers' compensation and employer's liability

1 coverage evidencing that the general employer carries workers' compensation insurance with that  
2 insurer with no indebtedness for its employees for the term of the contract or arrangement. In the  
3 event that the special employer fails to obtain and maintain at policy renewal and thereafter this  
4 insurer generated insurance coverage certification demonstrating Rhode Island workers'  
5 compensation and employer's liability coverage from the general employer, the special employer  
6 is deemed to be the employer pursuant to the provisions of this section. Upon the cancellation or  
7 failure to renew, the insurer having written the workers' compensation and employer's liability  
8 policy shall notify the certificate holders and the department of the cancellation or failure to  
9 renew and upon notice, the certificate holders shall be deemed to be the employer for the term of  
10 the contract or arrangement unless or until a new certification is obtained.

11 (7) (i) "Injury" means and refers to personal injury to an employee arising out of and in  
12 the course of his or her employment, connected and referable to the employment.

13 (ii) An injury to an employee while voluntarily participating in a private, group, or  
14 employer-sponsored carpool, vanpool, commuter bus service, or other rideshare program, having  
15 as its sole purpose the mass transportation of employees to and from work shall not be deemed to  
16 have arisen out of and in the course of employment. Nothing in the foregoing provision shall be  
17 held to deny benefits under chapters 29 -- 38 and chapter 47 of this title to employees such as  
18 drivers, mechanics, and others who receive remuneration for their participation in the rideshare  
19 program. Provided, that the foregoing provision shall not bar the right of an employee to recover  
20 against an employer and/or driver for tortious misconduct.

21 (8) "Maximum medical improvement" means a point in time when any medically  
22 determinable physical or mental impairment as a result of injury has become stable and when no  
23 further treatment is reasonably expected to materially improve the condition. Neither the need for  
24 future medical maintenance nor the possibility of improvement or deterioration resulting from the  
25 passage of time and not from the ordinary course of the disabling condition, nor the continuation  
26 of a pre-existing condition precludes a finding of maximum medical improvement. A finding of  
27 maximum medical improvement by the workers' compensation court may be reviewed only  
28 where it is established that an employee's condition has substantially deteriorated or improved.

29 (9) "Physician" means medical doctor, surgeon, dentist, licensed psychologist,  
30 chiropractor, osteopath, podiatrist, or optometrist, as the case may be.

31 (10) "Suitable alternative employment" means employment or an actual offer of  
32 employment which the employee is physically able to perform and will not exacerbate the  
33 employee's health condition and which bears a reasonable relationship to the employee's  
34 qualifications, background, education, and training. The employee's age alone shall not be

1 considered in determining the suitability of the alternative employment.

2 (11) "Independent contractor" means a person who has filed a notice of designation as  
3 independent contractor with the director pursuant to section 28-29-17.1 or as otherwise found by  
4 the workers' compensation court.

5 (12) "Leased employee" means an employee leased to a special employer by a labor-  
6 leasing firm under an agreement between the special employer and the labor-leasing firm, to  
7 perform duties related to the conduct of the special employer's business. "Leased employee" does  
8 not include a "temporary employee."

9 (13) "Temporary employee" means an employee who is furnished to a special employer  
10 to substitute for a "permanent employee" or for a "leased employee" as defined in this section, or  
11 to meet seasonal or short-term workload conditions of the special employer.

12 **28-29-6.1. Secondary provision of workers' compensation insurance.** -- (a) Whenever  
13 a general contractor or a construction manager enters into a contract with a subcontractor for  
14 work to be performed in Rhode Island, the general contractor or construction manager shall at all  
15 times require written documentation evidencing that the subcontractor carries workers'  
16 compensation insurance with no indebtedness for its employees for the term of the contract or is  
17 an independent contractor pursuant to the provisions of section 28-29-17.1. In the event that the  
18 general contractor or construction manager fails to obtain ~~the written documentation and~~  
19 maintain, at policy renewal, this insurer-generated insurance coverage certification demonstrating  
20 Rhode Island workers' compensation and employer's liability coverage from the subcontractor,  
21 the general contractor or construction manager shall be deemed to be the employer pursuant to  
22 provisions of section 28-29-2. Upon the cancellation or failure to renew, the insurer, having  
23 written the workers' compensation and employer's liability policy, shall notify the certificate  
24 holders and the division of workers' compensation of the cancellation or failure to renew, and  
25 thereafter the certificate holders shall be deemed to be the employer for the duration of the  
26 contract or arrangement unless or until a new certificate has been obtained.

27 (b) For the purposes of this section, "construction manager" means an individual  
28 corporation, partnership, or joint venture or other legal entity responsible for supervising and  
29 controlling all aspects of construction work to be performed on the construction project, as  
30 designated in the project documents, in addition to the possibility of performing some of the  
31 construction services itself. For the purposes of this section, the construction manager need have  
32 no contractual involvement with any of the parties to the construction project other than the  
33 owner, or may contract directly with the trade contractors pursuant to its agreement with the  
34 owner.

1 (c) This section only applies to a general contractor, subcontractor, or construction  
2 manager deemed an employer subject to the provisions of Chapters 29 -- 38 of this title, as  
3 provided in section 28-29-6.

4 (d) Whenever the workers' compensation insurance carrier is obligated to pay workers'  
5 compensation benefits to the employee of an uninsured subcontractor, the workers' compensation  
6 insurance carrier shall have a complete right of indemnification to the extent benefits are paid  
7 against either the uninsured subcontractor, uninsured general contractor or uninsured construction  
8 manager.

9 SECTION 2. Section 28-33-19 of the General Laws in Chapter 28-33 entitled "Workers'  
10 Compensation - Benefits" is hereby amended to read as follows:

11 **28-33-19. Additional compensation for specific injuries.** -- (a) (1) In case of the  
12 following specified injuries there shall be paid in addition to all other compensation provided for  
13 in chapters 29 to 38 of this title a weekly payment equal to ~~one half (1/2) of the average weekly~~  
14 ~~earnings of the injured employee, but in no case more than ninety dollars (\$90.00) nor less than~~  
15 ~~forty five dollars (\$45.00) per week. In case of the following specified injuries that occur on or~~  
16 ~~after January 1, 2012, there shall be paid in addition to all other compensation provided for in~~  
17 ~~chapters 29 to 38 of this title a weekly payment equal to one half (1/2) of the average weekly~~  
18 ~~earnings of the injured employee, but in no case more than one hundred eighty dollars (\$180) nor~~  
19 ~~less than ninety dollars (\$90.00) per week~~ seventy-five percent (75%) of his or her average  
20 weekly spendable base wage, earnings or salary as computed pursuant to the provisions of section  
21 28-33-20, except that said weekly payment shall not be more than sixty percent (60%) of the state  
22 average weekly wage of individuals in covered employment under the provisions of the Rhode  
23 Island employment security act, as computed and established by the Rhode Island department of  
24 labor and training annually on or before May 31<sup>st</sup> of each year under the provisions of subsection  
25 28-44-6(a). Payment made under this section shall be made in a one time payment unless the  
26 parties otherwise agree. Payment shall be mailed within fourteen (14) days of the entry of a  
27 decree, order, or agreement of the parties:

28 (i) For the loss by severance of both hands at or above the wrist, or for the loss of the  
29 arm at or above the elbow or for the loss of the leg at or above the knee, or both feet at or above  
30 the ankle, or of one hand and one foot, or the entire and irrecoverable loss of the sight of both  
31 eyes, or the reduction to one-tenth (1/10) or less of normal vision with glasses, for a period of  
32 three hundred twelve (312) weeks; provided, that for the purpose of this chapter the Snellen chart  
33 reading 20/200 shall equal one-tenth (1/10) of normal vision or a reduction of ninety percent  
34 (90%) of the vision. Additionally, any loss of visual performance including, but not limited to,

1 loss of binocular vision, other than direct visual acuity may be considered in evaluating eye loss;

2 (ii) For the loss by severance of either arm at or above the elbow, or of either leg at or

3 above the knee, for a period of three hundred twelve (312) weeks;

4 (iii) For the loss by severance of either hand at or above the wrist for a period of two

5 hundred forty-four (244) weeks;

6 (iv) For the entire and irrecoverable loss of sight of either eye, or the reduction to one-

7 tenth ( 1/10) or less of normal vision with glasses, or for loss of binocular vision for a period of

8 one hundred sixty (160) weeks;

9 (v) For the loss by severance of either foot at or above the ankle, for a period of two

10 hundred five (205) weeks;

11 (vi) For the loss by severance of the entire distal phalange of either thumb for a period of

12 thirty-five (35) weeks; and for the loss by severance at or above the second joint of either thumb,

13 for a period of seventy-five (75) weeks;

14 (vii) For the loss by severance of one phalange of either index finger, for a period of

15 twenty-five (25) weeks; for the loss by severance of at least two (2) phalanges of either index

16 finger, for a period of thirty-two (32) weeks; for the loss by severance of at least three (3)

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

18 (viii) For the loss by severance of one phalange of the second finger of either hand, for a

19 period of sixteen (16) weeks; for the loss by severance of two (2) phalanges of the second finger

20 of either hand, for a period of twenty-two (22) weeks; for the loss by severance of three (3)

21 phalanges of the second finger on either hand, for a period of thirty (30) weeks;

22 (ix) For the loss by severance of one phalange of the third finger of either hand, for a

23 period of twelve (12) weeks; for the loss by severance of two (2) phalanges of the third finger of

24 either hand, for a period of eighteen (18) weeks; for the loss by severance of three (3) phalanges

25 of a third finger of either hand, for a period of twenty-five (25) weeks;

26 (x) For the loss by severance of one phalange of the fourth finger of either hand, for a

27 period of ten (10) weeks; for the loss by severance of two (2) phalanges of the fourth finger of

28 either hand, for a period of fourteen (14) weeks; for the loss by severance of three (3) phalanges

29 of a fourth finger of either hand, for a period of twenty (20) weeks;

30 (xi) For the loss by severance of one phalange of the big toe on either foot, for a period

31 of twenty (20) weeks; for the loss by severance of two (2) phalanges of the big toe of either foot,

32 for a period of thirty-eight (38) weeks; for the loss by severance at or above the distal joint of any

33 other toe than the big toe, for a period of ten (10) weeks for each such toe;

34 (xii) For partial loss by severance for any of the injuries specified in paragraphs (1)(i) --

1 (1)(xi) of this subsection, proportionate benefits shall be paid for the period of time that the  
2 partial loss by severance bears to the total loss by severance.

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

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

16 (i) For permanent disfigurement of the body the number of weeks may not exceed five  
17 hundred (500) weeks, which sum shall be payable in a one time payment within fourteen (14)  
18 days of the entry of a decree, order, or agreement of the parties in addition to all other sums under  
19 this section wherever it is applicable.

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

24 (ii) Hearing loss shall be evaluated pursuant to protocols established by the workers'  
25 compensation medical advisory board. All treatment consistent with this subsection shall be  
26 consistent with the protocols established by the workers' compensation medical advisory board  
27 subject to section 28-33-5.

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

33 (iv) There shall be payable as permanent partial disability for total occupational deafness  
34 of one ear, seventy-five (75) weeks of compensation; for total occupational deafness of both ears,



1 two hundred forty-four (244) weeks of compensation; for partial occupational deafness in one or  
2 both ears, compensation shall be paid for any periods that are proportionate to the relation which  
3 the hearing loss bears to the amount provided in this subdivision for total loss of hearing in one or  
4 both ears, as the case may be. For the complete loss of hearing for either ear due to external  
5 trauma or by other mechanism, acuity loss shall be paid pursuant to this subsection.

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

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

12 (vii) If previous hearing loss, whether occupational or not, is established by an  
13 audiometric examination or other competent evidence, whether or not the employee was exposed  
14 to assessable noise exposure within one year preceding the test, the employer is not liable for the  
15 previous loss, nor is the employer liable for a loss for which compensation has previously been  
16 paid or awarded. The employer is liable only for the difference between the percent of  
17 occupational hearing loss determined as of the date of the audiometric examination conducted by  
18 a certified audiometric technician using an audiometer which meets the specifications established  
19 by the American National Standards Institute (ANSI 3.6-1969, ri973) used to determine  
20 occupational hearing loss and the percentage of loss established by the baseline audiometric  
21 examination. An amount paid to an employee for occupational hearing loss by any other  
22 employer shall be credited against compensation payable by the subject employer for the hearing  
23 loss. The employee shall not receive in the aggregate greater compensation from all employers  
24 for occupational hearing loss than that provided in this section for total occupational hearing loss.  
25 A payment shall not be paid to an employee unless the employee has worked in excessive noise  
26 exposure employment for a total period of at least one hundred eighty (180) days for the  
27 employer for whom compensation is claimed.

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

31 (ix) The total compensation due for hearing loss is recovered from the employer who last  
32 employed the employee in whose employment the employee was last exposed to harmful noise  
33 and the insurance carrier, if any, on the risk when the employee was last so exposed, and if the  
34 occupational hearing loss was contracted while the employee was in the employment of a prior

1 employer, and there was no baseline testing by the last employer, the employer and insurance  
2 carrier which is made liable for the total compensation as provided by this section may petition  
3 the worker's compensation court for an apportionment of the compensation among the several  
4 employers which since the contraction of the hearing loss have employed the employee in a noisy  
5 environment.

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

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

12 SECTION 3. Sections 28-35-6, 28-35-8, 28-35-32 and 28-35-57 of the General Laws in  
13 Chapter 28-35 entitled "Workers' Compensation - Procedure" are hereby amended to read as  
14 follows:

15 **28-35-6. Notice of amendments to memorandum of agreement.** -- (a) If the workers'  
16 compensation court makes any amendment or addition to the memorandum of agreement, the  
17 administrator of the workers' compensation court shall immediately notify the department of the  
18 changes in the agreement.

19 (b) If an employer or insurer and an employee and his or her attorney, if represented,  
20 reach an agreement, subsequent to the filing of a memorandum of agreement, order, or decree, as  
21 to any issue, the parties shall file a written agreement and receipt with the department, signed by  
22 the parties, and on a form prescribed by the department. A copy of any agreement and receipt  
23 shall be delivered to each of the parties. Upon the filing of the agreement and receipt with the  
24 department, it shall be as binding upon both parties as a preliminary determination order or  
25 decree.

26 (c) The attorney for an injured worker shall be entitled to a counsel fee reasonably  
27 compensating him or her for the services he or she rendered on behalf of the injured worker in  
28 securing the relief sought.

29 **28-35-8. Filing of non-prejudicial memorandum of agreement.** -- (a) Notwithstanding  
30 section 28-35-1, if the employer files a memorandum of agreement but specifically designates  
31 that agreement as a "non-prejudicial" or "without prejudice", the employer may pay weekly  
32 compensation benefits not exceeding thirteen (13) weeks. In these cases, the employer shall send  
33 a copy of the non-prejudicial memorandum and any amendments to it to the employee and his or  
34 her attorney or the representative of the decedent and his or her attorney by certified mail, return

1 receipt requested, at the same time as it is filed with the department in the same manner as if it  
2 were a memorandum of agreement. The non-prejudicial memorandum of agreement shall contain  
3 all information as directed by section 28-35-1. Having done so, the non-prejudicial memorandum  
4 of agreement and any action taken pursuant to it shall be without prejudice to any party  
5 subsequently maintaining any position as to employer liability for payments under chapters 29 --  
6 38 of this title, maintainable in the absence of an agreement. If at any time within or at the close  
7 of the thirteen-week period after payments of compensation have commenced the employer or  
8 insurer terminates weekly payments to the employee or to those entitled to payments on account  
9 of death of an employee, the employer or insurer shall notify the employee and his or her attorney  
10 or the representative of the decedent employee and his or her attorney within ten (10) days on a  
11 form prescribed by the department [by certified mail, return receipt requested](#) that:

12 (1) Payments have terminated;

13 (2) The claim has not been formally accepted; and

14 (3) The employee has the right to file a petition, within the two (2) year limitation as set  
15 forth in section 28-35-57, to formally establish liability of the employer or insurer.

16 (b) If the employer or insurer makes payments of weekly benefits to the employee or to  
17 those entitled to payments on account of death of an employee for more than the thirteen (13)  
18 week period, the payments shall constitute a conclusive admission of liability and ongoing  
19 incapacity as to the injuries set forth in the non-prejudicial memorandum of agreement. The  
20 employer or insurer shall within ten (10) days of making additional payments file a memorandum  
21 of agreement pursuant to section 28-35-1.

22 **28-35-32. Costs -- Counsel and witness fees.** -- (a) No fee shall be charged by the clerk  
23 of any court or by the administrator of the workers' compensation court for the performance of  
24 any service required by this chapter, except for certified copies of decrees and copies of  
25 transcripts. Notwithstanding any provisions of law to the contrary, the workers' compensation  
26 court shall be allowed a filing fee of twenty dollars (\$20.00) for the filing of a petition under  
27 chapters 29 -- 38 of this title, and a filing fee of twenty-five dollars (\$25.00) for the filing of an  
28 appeal under section 28-35-28, which sums shall be deposited to provide additional funding to the  
29 uninsured employers fund as established by chapter 28-53. In proceedings under this chapter, and  
30 in proceeding under chapter 37 of this title, costs shall be awarded, including counsel fees and  
31 fees for medical and other expert witnesses including interpreters, to employees who successfully  
32 prosecute petitions for compensation, petitions for medical expenses, petitions to amend a  
33 preliminary order or memorandum of agreement, and all other employee petitions, except  
34 petitions for lump sum commutation, and to employees who successfully defend, in whole or in

1 part, proceedings seeking to reduce or terminate any and all workers' compensation benefits, and  
2 to medical services providers who successfully prosecute petitions for the payment of medical  
3 expenses except that medical services providers shall not be paid expert witness fees for  
4 testimony in support of petitions filed in their behalf. These costs shall be assessed against the  
5 employer by a single judge, by an appellate panel and by the supreme court on appeal consistent  
6 with the services rendered before each tribunal and shall be made a part of the decree. No  
7 employee's attorney shall accept any other or additional fees for his services for the particular  
8 petition for which the fees are awarded in each tribunal.

9 [\(b\) Costs, including counsel fees, shall be awarded in the same manner as subsection \(a\)](#)  
10 [to reasonably compensate attorneys who successfully secure relief for injured workers pursuant to](#)  
11 [sections 28-35-1, 28-35-5, 28-35-6 and 28-35-7.1.](#)

12 **28-35-57. Limitation of claims for compensation.** -- (a) An employee's claim for  
13 compensation under chapters 29 -- 38 of this title shall be barred unless payment of weekly  
14 compensation has commenced, or a petition, as provided for in this chapter, has been filed within  
15 two (2) years after the occurrence or manifestation of the injury or incapacity, or in case of the  
16 death of the employee, or in the event of his or her physical or mental incapacity, within two (2)  
17 years after the death of the employee or the removal of the physical or mental incapacity.

18 (b) The time for filing shall not begin to run in cases of latent or undiscovered physical  
19 or mental impairment due to injury including disease until:

20 (1) The person claiming benefits knew, or by exercise of reasonable diligence should  
21 have known, of the existence of the impairment and its causal relationship to his or her  
22 employment; or

23 (2) After disablement, whichever is later.

24 (c) In any case in which weekly compensation benefits have been paid, pursuant to  
25 section 28-35-8, in which the employer or insurer has failed to file the required notices, [or has](#)  
26 [failed to comply with the requirements thereof regarding the mailing of documents required to be](#)  
27 [sent to the employee,](#) the claimant's right to file a petition for compensation benefits shall be  
28 preserved without time limitation.

29 SECTION 4. This act shall take effect upon passage.

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LC00971  
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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 amend certain statutes applicable to workers' compensation.
- 2 This act would take effect upon passage.

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LC00971  
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