

2012 -- S 2588

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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 WORKERS' COMPENSATION - BENEFITS

Introduced By: Senator Juan M. Pichardo

Date Introduced: February 28, 2012

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-33-19 of the General Laws in Chapter 28-33 entitled "Workers'
2 Compensation - Benefits" is hereby amended to read as follows:

3 **28-33-19. Additional compensation for specific injuries.** -- (a) (1) In case of the
4 following specified injuries there shall be paid in addition to all other compensation provided for
5 in chapters 29 to 38 of this title a weekly payment equal to one-half (1/2) of the average weekly
6 earnings of the injured employee, but in no case more than ninety dollars (\$90.00) nor less than
7 forty-five dollars (\$45.00) per week. In case of the following specified injuries that occur on or
8 after January 1, 2012, there shall be paid in addition to all other compensation provided for in
9 chapters 29 to 38 of this title a weekly payment equal to one-half (1/2) of the average weekly
10 earnings of the injured employee, but in no case more than one hundred eighty dollars (\$180) nor
11 less than ninety dollars (\$90.00) per week. Payment made under this section shall be made in a
12 one time payment unless the parties otherwise agree. Payment shall be mailed within fourteen
13 (14) days of the entry of a decree, order, or agreement of the parties:

14 (i) For the loss by severance of both hands at or above the wrist, or for the loss of the
15 arm at or above the elbow or for the loss of the leg at or above the knee, or both feet at or above
16 the ankle, or of one hand and one foot, or the entire and irrecoverable loss of the sight of both
17 eyes, or the reduction to one-tenth (1/10) or less of normal vision with glasses, for a period of
18 three hundred twelve (312) weeks; provided, that for the purpose of this chapter the Snellen chart
19 reading 20/200 shall equal one-tenth (1/10) of normal vision or a reduction of ninety percent

1 (90%) of the vision. Additionally, any loss of visual performance including, but not limited to,
2 loss of binocular vision, other than direct visual acuity may be considered in evaluating eye loss;

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

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

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

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

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

15 (vii) For the loss by severance of one phalange of either index finger, for a period of
16 twenty-five (25) weeks; for the loss by severance of at least two (2) phalanges of either index
17 finger, for a period of thirty-two (32) weeks; for the loss by severance of at least three (3)
18 phalanges of either index finger, for a period of forty-six (46) weeks;

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

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

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

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

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

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

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

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

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

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

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

34 (iv) There shall be payable as permanent partial disability for total occupational deafness

1 of one ear, seventy-five (75) weeks of compensation; for total occupational deafness of both ears,
2 two hundred forty-four (244) weeks of compensation; for partial occupational deafness in one or
3 both ears, compensation shall be paid for any periods that are proportionate to the relation which
4 the hearing loss bears to the amount provided in this subdivision for total loss of hearing in one or
5 both ears, as the case may be. For the complete loss of hearing for either ear due to external
6 trauma or by other mechanism, acuity loss shall be paid pursuant to this subsection.

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

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

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

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

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

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

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

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO WORKERS' COMPENSATION - BENEFITS

- 1 This act would allow an employer or insurer to be entitled to recover any overpayments
- 2 made for indemnity benefits by set-off against payments due to an employee for loss of use or
- 3 disfigurement pursuant to this section.
- 4 This act would take effect upon passage.

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