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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION-- GENERAL PROVISIONS

Introduced By: Representatives Blazejewski, and Lally

Date Introduced: February 28, 2013

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

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

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

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

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

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

(ii) As used under the provisions of this title, "functional impairment" means an anatomical or functional abnormality existing after the date of maximum medical improvement as determined by a medically or scientifically demonstrable finding and based upon the Sixth (6th) edition of the American Medical Association's Guide to the Evaluation of Permanent Impairment or comparable publications of the American Medical Association.

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

(4) "Employee" means any person who has entered into the employment of or works under contract of service or apprenticeship with any employer, except that in the case of a city or town other than the city of Providence it shall only mean that class or those classes of employees as may be designated by a city, town, or regional school district in a manner provided in this chapter to receive compensation under chapters 29 -- 38 of this title. Any person employed by the state of Rhode Island, except for sworn employees of the Rhode Island State Police, or by the Rhode Island Airport Corporation who is otherwise entitled to the benefits of chapter 19 of title 45 shall be subject to the provisions of chapters 29 -- 38 of this title for all case management procedures and dispute resolution for all benefits. The term "employee" does not include any individual who is a shareholder or director in a corporation, general or limited partners in a general partnership, a registered limited liability partnership, a limited partnership, or partners in a registered limited liability limited partnership, or any individual who is a member in a limited liability company. These exclusions do not apply to shareholders, directors and members who have entered into the employment of or who work under a contract of service or apprenticeship within a corporation or a limited liability company. The term "employee" also does not include a sole proprietor, independent contractor, or a person whose employment is of a casual nature, and who is employed other than for the purpose of the employer's trade or business, or a person whose services are voluntary or who performs charitable acts, nor shall it include the members of the regularly organized fire and police departments of any town or city except for appeals from an order of the retirement board filed pursuant to the provisions of Rhode Island general law section 45-21.2-9; provided, however, that it shall include the members of the police and aircraft rescue and firefighting (ARFF) units of the Rhode Island Airport Corporation. Whenever a contractor has contracted with the state, a city, town, or regional school district any person employed by that contractor in work under contract shall not be deemed an employee of the state, city, town, or regional school district as the case may be. Any person who on or after January 1, 1999, was an employee and became a corporate officer shall remain an employee, for purposes of these

chapters, unless and until coverage under this act is waived pursuant to subsection 28-29-8(b) or section 28-29-17. Any person who is appointed a corporate officer between January 1, 1999 and December 31, 2001, and was not previously an employee of the corporation, will not be considered an employee, for purposes of these chapters, unless that corporate officer has filed a notice pursuant to subsection 28-29-19(b). In the case of a person whose services are voluntary or who performs charitable acts, any benefit received, in the form of monetary remuneration or otherwise, shall be reportable to the appropriate taxation authority but shall not be deemed to be wages earned under contract of hire for purposes of qualifying for benefits under chapters 29 -- 38 of this title. Any reference to an employee who had been injured shall, where the employee is dead, include a reference to his or her dependents as defined in this section, or to his or her legal representatives, or, where he or she is a minor or incompetent, to his or her conservator or guardian. A "seasonal occupation" means those occupations in which work is performed on a seasonal basis of not more than sixteen (16) weeks.

(5) "Employer" includes any person, partnership, corporation, or voluntary association, and the legal representative of a deceased employer; it includes the state, and the city of Providence. It also includes each city, town, and regional school district in the state that votes or accepts the provisions of chapters 29 -- 38 of this title in the manner provided in this chapter or is a party to an appeal from an order of the retirement board filed pursuant to the provisions of Rhode Island general law section 45-21.2-9.

(6) "General or special employer":

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

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

(iii) Whenever there is a general employer and special employer wherein the general employer supplies to the special employer an employee and the general employer pays or is obligated to pay the wages or salaries of the supplied employee, then, notwithstanding the fact that direction and control is in the special employer and not the general employer, the general employer, if it is subject to the provisions of the Workers' Compensation Act or has accepted that Act, shall be deemed to be the employer as set forth in subdivision (5) of this section and both the general and special employer shall be the employer for purposes of sections 28-29-17 and 28-29-18. However, for injuries occurring on or after July 1, 2013, excepting injuries where the special employer is making payment of workers' compensation benefits directly to the injured temporary

employee pursuant to paragraph 28-29-2(6)(iv) herein, if the special employer has acted or failed to act with reckless disregard for the safety of a temporary employee as defined in subdivision 28-29-2 (13) herein, and such reckless disregard for the safety of the temporary employee was a proximate cause of said temporary employee's injury, the special employer only in such eve3nt, shall not be deemed the employer for purposes of section 28-09-30.

(iv) Effective January 1, 2003, whenever a general employer enters into a contract or arrangement with a special employer to supply an employee or employees for work, the special employer shall require an insurer generated insurance coverage certification, on a form prescribed by the department, demonstrating Rhode Island workers' compensation and employer's liability coverage evidencing that the general employer carries workers' compensation insurance with that insurer with no indebtedness for its employees for the term of the contract or arrangement. In the event that the special employer fails to obtain and maintain at policy renewal and thereafter this insurer generated insurance coverage certification demonstrating Rhode Island workers' compensation and employer's liability coverage from the general employer, the special employer is deemed to be the employer pursuant to the provisions of this section. Upon the cancellation or failure to renew, the insurer having written the workers' compensation and employer's liability policy shall notify the certificate holders and the department of the cancellation or failure to renew and upon notice, the certificate holders shall be deemed to be the employer for the term of the contract or arrangement unless or until a new certification is obtained.

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

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

(8) "Maximum medical improvement" means a point in time when any medically determinable physical or mental impairment as a result of injury has become stable and when no further treatment is reasonably expected to materially improve the condition. Neither the need for future medical maintenance nor the possibility of improvement or deterioration resulting from the passage of time and not from the ordinary course of the disabling condition, nor the continuation

of a pre-existing condition precludes a finding of maximum medical improvement. A finding of maximum medical improvement by the workers' compensation court may be reviewed only where it is established that an employee's condition has substantially deteriorated or improved.

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

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

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

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

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

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

28-29-6.1. Secondary provision of workers' compensation insurance. -- (a) Whenever a general contractor or a construction manager enters into a contract with a subcontractor for work to be performed in Rhode Island, the general contractor or construction manager shall at all times require an insurer-generated insurance coverage certification, on a form prescribed by the department, demonstrating Rhode Island workers' compensation and employer's liability coverage written documentation evidencing that the subcontractor carries workers' compensation insurance with no indebtedness for its employees for the term of the contract or is an independent contractor pursuant to the provisions of section 28-29-17.1. In the event that the general contractor or construction manager fails to obtain ~~the~~ and maintain at policy renewal this insurer-generated coverage certification demonstrating Rhode Island workers' compensation, and employer's liability coverage written documentation from the subcontractor, the general contractor or construction manager shall be deemed to be the employer pursuant to provisions of section 28-29-

2. Upon the cancellation or failure to renew, the insurer having written the workers' compensation and employer's liability policy shall notify the certificate holders and the division of workers' compensation of the cancellation or failure to renew, and thereafter the certificate holders shall be deemed to be the employer for the duration of the contract or arrangement unless or until a new certificate has been obtained.

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

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

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

SECTION 3. Section 28-33-19 of the General Laws in Chapter 28-33 entitled "Workers' Compensation - Benefits" is hereby amended to read as follows:

28-33-19. Additional compensation for specific injuries. -- (a) (1) In case of the following specified injuries that occur on or after January 1, 2015, there shall be paid in addition to all other compensation provided for in chapters 29 to 38 of this title a weekly payment equal to one-half (1/2) of the average weekly earnings of the injured employee, but in no case more than ~~ninety dollars ($90.00) nor less than forty-five dollars ($45.00)~~ one hundred eighty dollars ($180) nor less than ninety dollars ($90.00) per week. In case of the following specified injuries that occur on or after January 1, 2012, there shall be paid in addition to all other compensation provided for in chapters 29 to 38 of this title a weekly payment equal to one-half (1/2) of the average weekly earnings of the injured employee, but in no case more than one hundred eighty dollars ($180) nor less than ninety dollars ($90.00) per week. Payment made under this section shall be made in a one time payment unless the parties otherwise agree. Payment shall be mailed

within fourteen (14) days of the entry of a decree, order, or agreement of the parties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Hearing loss shall be evaluated pursuant to protocols established by the workers' compensation medical advisory board. All treatment consistent with this subsection shall be consistent with the protocols established by the workers' compensation medical advisory board

subject to section 28-33-5.

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

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

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

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

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

employer for whom compensation is claimed.

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

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

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

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

SECTION 4. Section 5-75-9 of the General Laws in Chapter 5-75 entitled "Professional Employer Organizations Act of 2004" is hereby amended to read as follows:

5-75-9. Workers' compensation. -- (a) The responsibility to obtain workers' compensation coverage for covered employees, from a carrier licensed to do business in this state and otherwise in compliance with all applicable requirements, shall be specifically allocated in the professional employer agreement to either the client or the PEO. If such responsibility is allocated to the PEO under any such agreement, such agreement shall require that the PEO maintain and provide to client, at the termination of the agreement if requested by the client, records regarding the loss experience related to workers' compensation insurance provided to covered employees pursuant to such agreement. A certificate of insurance as proof of workers' compensation coverage shall be issued to the client if the PEO is to provide coverage or to the PEO if the client is to provide coverage with notification of cancellation to be issued immediately to either entity. In the case of cancellation, the other entity must immediately obtain coverage.

(b) Workers' compensation. - Except as is otherwise provided in chapters 29-38 of title 28 for "temporary employees" provided to the client and as to the furnishing of "temporary help

services" as defined in this chapter, both ~~Both~~ client and the PEO shall be considered the employer for the purpose of coverage under the workers' compensation act and both the PEO and its client shall be entitled to protection of the exclusive remedy provision of the workers' compensation act irrespective of which co-employer obtains such workers' compensation coverage.

SECTION 5. This act shall take effect upon passage with some provisions effective July 1, 2013 and January 1, 2015.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

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RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION-- GENERAL PROVISIONS

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This act would: (1) Define "leased" and "temporary" employees; (2) Impose sole liability for certain injuries to a "temporary employee" on special employers; (3) Impose insurer-generated coverage certification maintenance and documentation requirements on the general contractor or construction manager; (4) Provide compensation for specific injuries ranging from ninety dollars ($90.00) to one hundred eight dollars ($180) effective January 1, 2015; and (5) Create an exception for Professional Employer Organizations and their clients dealing with "temporary employees" and "temporary help services."

This act would take effect upon passage with some provisions effective July 1, 2013 and January 1, 2015.

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