

2014 -- H 7770

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

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

Introduced By: Representatives Nunes, and Jacquard

Date Introduced: February 27, 2014

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-33-20 of the General Laws in Chapter 28-33 entitled "Workers'
2 Compensation - Benefits" is hereby amended to read as follows:

3 **28-33-20. Computation of earnings.** -- (a) For the purposes of this chapter, the average
4 weekly wage shall be ascertained as follows:

5 (1) For full-time or regular employees, by dividing the gross wages, inclusive of
6 overtime pay; provided, that bonuses and overtime shall be averaged over the length of
7 employment but not in excess of the preceding fifty-two (52) week period, earned by the injured
8 worker in employment by the employer in whose service he or she is injured during the thirteen
9 (13) calendar weeks immediately preceding the week in which he or she was injured, by the
10 number of calendar weeks during which, or any portion of which, the worker was actually
11 employed by that employer, including any paid vacation time. In making this computation,
12 absence for seven (7) consecutive calendar days, although not in the same calendar week, shall be
13 considered as absence for a calendar week. When the employment commenced otherwise than the
14 beginning of a calendar week, the calendar week and wages earned during that week shall be
15 excluded in making the above computation. When the employment previous to injury as provided
16 above is computed to be less than a net period of two (2) calendar weeks, his or her weekly wage
17 shall be considered to be equivalent to the average weekly wage prevailing in the same or similar
18 employment at the time of injury except that when an employer has agreed to pay a certain hourly

1 wage to the worker, then the hourly wage so agreed upon shall be the hourly wage for the injured
2 worker and his or her average weekly wage shall be computed by multiplying that hourly wage
3 by the number of weekly hours scheduled for full-time work by full-time employees regularly
4 employed by the employer. Where the injured employee has worked for more than one employer
5 during the thirteen (13) weeks immediately preceding his or her injury, his or her average weekly
6 wages shall be calculated upon the basis of wages earned from all those employers in the period
7 involved by totaling the gross earnings from all the employers and dividing by the number of
8 weeks in which he or she was actually employed by any employer, in the same manner as if the
9 employee had worked for a single employer and, except in the case of apportionment of liability
10 among successive employers as provided in section 28-34-8, the employer in whose employ the
11 injury was sustained shall be liable for all benefits provided by chapters 29 -- 38 of this title. A
12 schedule of the computation of the average weekly wage in compliance with this section shall be
13 a necessary part of the memorandum of agreement required by section 28-35-1. Where the
14 employer has been accustomed to paying the employee a sum to cover any special expense
15 incurred by the employee by the nature of his or her employment, the sum paid shall not be
16 reckoned as part of the employee's wages, earnings, or salary. The fact that an employee has
17 suffered a previous injury or received compensation for a previous injury shall not preclude
18 compensation for a later injury or for death; but in determining the compensation for the later
19 injury or death, his or her average weekly wages shall be any sum that will reasonably represent
20 his or her weekly earning capacity at the time of the later injury, in the employment in which he
21 or she was working at that time, and shall be arrived at according to, and subject to the limitations
22 of, the provisions of this section. In computing the average weekly wages earned subsequent to
23 the first injury, the time worked and wages earned prior to that injury shall be excluded.

24 (2) In occupations that are seasonal, the "average weekly wage" means one-fifty second
25 (1/52) of the total wages which the employee has earned during the twelve (12) calendar months
26 immediately preceding the injury.

27 (3) "Wages of an employee working part-time" means the gross wages earned during the
28 number of weeks so employed, or of weeks in which the employee worked, up to a maximum of
29 twenty-six (26) calendar weeks immediately preceding the date of injury, divided by the number
30 of weeks employed, or by twenty-six (26), as the case may be. "Part-time" means working by
31 custom and practice under the verbal or written employment contract in force at the time of the
32 injury, where the employee agrees to work or is expected to work on a regular basis less than
33 twenty (20) hours per week. Wages shall be calculated as follows:

34 (i) For part-time employees, by dividing the gross wages, inclusive of overtime pay;

1 provided, any bonuses and overtime shall be averaged over the length of employment but not in
2 excess of the preceding fifty-two (52) week period, earned by the injured worker in employment
3 by the employer in whose service he or she is injured during the twenty-six (26) consecutive
4 calendar weeks immediately preceding the week in which he or she was injured, by the number of
5 calendar weeks during which, or any portion of which, the worker was actually employed by that
6 employer, including any paid vacation time. In making this computation, absence for seven (7)
7 consecutive calendar days, although not in the same calendar week, shall be considered as
8 absence for a calendar week. When the employment commenced otherwise than the beginning of
9 a calendar week, the calendar week and wages earned during that week shall be excluded in
10 making the above computation. When the employment previous to injury as provided above is
11 computed to be less than a net period of two (2) weeks, the weekly wage shall be considered to be
12 equivalent to the average weekly wage prevailing in the same or similar employment at the time
13 of injury except that when an employer has agreed to pay a certain hourly wage to the worker,
14 then the hourly wage so agreed upon shall be the hourly wage for the injured worker and his or
15 her average weekly wage shall be computed by multiplying that hourly wage by the number of
16 weekly hours agreed upon in the contract of hire.

17 (ii) In the event the injured employee had concurrent employment with one or more
18 additional employers at the time of injury, the average weekly wage shall be calculated for the
19 twenty-six (26) calendar weeks preceding the week in which the employee was injured upon the
20 basis of wages earned from all those employers in the period involved by totaling the gross
21 earnings from all the employers and dividing by the number of usable weeks the employee
22 actually was employed by that employer, in the same manner as if the employee had worked for a
23 single employer; provided, in the case of apportionment of liability among successive employers
24 pursuant to section 28-34-8, the employer in whose employ the injury was sustained shall be
25 liable for all benefits provided by chapters 29 -- 38 of this title. In the case that the injured
26 employee's other employer is a full-time employer, the average weekly wage shall be calculated
27 according to subdivision (1) for the thirteen (13) calendar weeks immediately preceding the week
28 in which he or she was injured. Calculations for part-time employment shall be calculated
29 separately for the twenty-six (26) calendar weeks immediately preceding the week of injury. A
30 schedule of computation of the average weekly wage in compliance with this section shall be a
31 necessary part of the memorandum of agreement required by section 28-35-1.

32 (iii) Where the employer is accustomed to paying the employee a sum to cover any
33 special expense incurred by the employee by the nature of the employment, that sum shall not be
34 reckoned as part of the employee's wages, earnings, or salary. The fact that an employee has

1 suffered a previous injury or received compensation for a previous injury shall not preclude
2 compensation for a later injury or for death. In determining the compensation for the later injury
3 or death, the average weekly wage shall be any sum that will reasonably represent the employee's
4 earning capacity at the time of the later injury, in the employment in which he or she was working
5 at that time, and shall be derived according to, and subject to, the limitations of the provisions of
6 this section; provided, that in computing the average weekly wages earned subsequent to the first
7 injury, the time worked and wages earned prior to that injury shall be excluded.

8 [\(b\) "Wages" as used in this section means earnings actually paid to employees for work](#)
9 [performed and shall not include any amounts included in those earnings relating to benefits such](#)
10 [as earnings based upon the prevailing wage rate applicable to state and/or federal contracts.](#)

11 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 LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION -
BENEFITS

1 This act would define wages for the purpose of calculating weekly workers'
2 compensation benefits as earnings paid to employees for work performed exclusive of any
3 amounts included reflecting benefits such as earnings based upon the prevailing wage rate
4 applicable to state and/or federal contracts.

5 This act would take effect upon passage.

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