

2023 -- S 1081

LC003107

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: Senators Ciccone, and F. Lombardi

Date Introduced: May 25, 2023

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-33-5, 28-33-17.1 and 28-33-19 of the General Laws in Chapter
2 28-33 entitled "Workers' Compensation — Benefits" are hereby amended to read as follows:

3 **28-33-5. Medical services provided by employer.**

4 The employer shall, subject to the choice of the employee as provided in § 28-33-8,
5 promptly provide for an injured employee any reasonable medical, surgical, dental, optical, or other
6 attendance or treatment, nurse and hospital service, medicines, crutches, and apparatus for such
7 period as is necessary, in order to cure, rehabilitate, or relieve the employee from the effects of the
8 employee's injury; ~~provided, that no fee for major surgery shall be paid unless permission for it is~~
9 ~~first obtained from the workers' compensation court, the employer, or the insurance carrier~~
10 ~~involved, except where compliance with it may prove fatal or detrimental to the employee.~~

11 Irrespective of the date of injury, the liability of the employer for hospital service rendered under
12 this section to the injured employee shall be the cost to the hospital of rendering the service at the
13 time the service is rendered. The director, after consultations with representatives of hospitals,
14 employers, and insurance companies, shall establish administrative procedures regarding the
15 furnishing and filing of data and the time and method of billing and may accept as representing the
16 costs for both routine and special services to patients, costs as computed for the federal Medicare
17 program. Each hospital licensed under chapter 17 of title 23 that renders services to injured
18 employees under the workers' compensation act, chapters 29 — 38 of this title, shall submit and

1 certify to the director, in accordance with requirements of the administrative procedures established
2 by him or her, its costs for those services. The employer shall also provide all medical, optical,
3 dental, and surgical appliances and apparatus required to cure or relieve the employee from the
4 effects of the injury, including, but not limited to, the following: ambulance and nursing service,
5 eyeglasses, dentures, braces and supports, artificial limbs, crutches, and other similar appliances;
6 provided, that the employer shall not be liable to pay for or provide hearing aids or other
7 amplification devices.

8 **28-33-17.1. Employees not entitled to compensation.**

9 (a) An employee shall not be entitled to compensation under chapters 29 — 38 of this title
10 for any period during which the employee was gainfully employed or found capable of gainful
11 employment at an average weekly wage equal to or in excess of the pre-injury average weekly
12 wage, exclusive of overtime, that he or she was earning at the time of his or her injury,
13 notwithstanding an existing agreement or decree to the contrary.

14 (b) In the event that any employer or insurer makes payment of compensation benefits to
15 an employee for any period during which the employee was not entitled to be paid in accordance
16 with subsection (a) of this section, or in the event that an overpayment of weekly benefits was paid,
17 the employer shall be entitled to credit for any payment of compensation made during that period
18 of employment against future compensation benefits and/or specific compensation benefits
19 pursuant to § 28-33-19 payable directly to the employee, as agreed to by the parties, or determined
20 by the court.

21 (c) An employee shall also not be entitled to compensation under chapters 29 — 38 of this
22 title for any period during which the employee was imprisoned as a result of a conviction of a
23 criminal offense. Where the disposition of criminal charges results in a conviction and includes
24 credit for time-served, such that the time served becomes a period served as the result of a
25 conviction, the employee shall not be entitled to compensation for that period. If payments were
26 made to the employee for that period, prior to the disposition of the charges, the employer/insurer
27 shall be entitled to a credit for the payments as against any future entitlement to benefits.

28 **28-33-19. Additional compensation for specific injuries.**

29 (a)(1) In case of the following specified injuries there shall be paid in addition to all other
30 compensation provided for in chapters 29 — 38 of this title a weekly payment equal to one-half
31 (½) of the average weekly earnings of the injured employee, but in no case more than ninety dollars
32 (\$90.00) nor less than forty-five dollars (\$45.00) per week. In case of the following specified
33 injuries that occur on or after January 1, 2012, there shall be paid in addition to all other
34 compensation provided for in chapters 29 — 38 of this title a weekly payment equal to one-half

1 (½) of the average weekly earnings of the injured employee, but in no case more than one hundred
2 eighty dollars (\$180) nor less than ninety dollars (\$90.00) per week. Payment made under this
3 section shall be made in a one-time payment unless the parties otherwise agree. Payment shall be
4 mailed within fourteen (14) days of the entry of a decree, order, or agreement of the parties:

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

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

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

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

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

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

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

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

33 (ix) For the loss by severance of one phalange of the third finger of either hand, for a period
34 of twelve (12) weeks; for the loss by severance of two (2) phalanges of the third finger of either

1 hand, for a period of eighteen (18) weeks; for the loss by severance of three (3) phalanges of a third
2 finger of either hand, for a period of twenty-five (25) weeks;

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

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

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

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

21 (3) In case of the following specified injuries there shall be paid in addition to all other
22 compensation provided for in chapters 29 — 38 under this title a weekly payment equal to one-half
23 ($\frac{1}{2}$) of the average weekly earnings of the injured employee, but in no case more than ninety dollars
24 (\$90.00) nor less than forty-five dollars (\$45.00) per week. Payment under this subsection shall be
25 made in a one-time payment unless the parties otherwise agree. Payment shall be mailed within
26 fourteen (14) days of the entry of a decree, order, or agreement of the parties:

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

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

1 (ii) Hearing loss shall be evaluated pursuant to protocols established by the workers'
2 compensation medical advisory board. All treatment consistent with this subsection shall be
3 consistent with the protocols established by the workers' compensation medical advisory board
4 subject to § 28-33-5.

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

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

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

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

22 (vii) If previous hearing loss, whether occupational or not, is established by an audiometric
23 examination or other competent evidence, whether or not the employee was exposed to assessable
24 noise exposure within one year preceding the test, the employer is not liable for the previous loss,
25 nor is the employer liable for a loss for which compensation has previously been paid or awarded.
26 The employer is liable only for the difference between the percent of occupational hearing loss
27 determined as of the date of the audiometric examination conducted by a certified audiometric
28 technician using an audiometer which meets the specifications established by the American
29 National Standards Institute (ANSI 3.6-1969, r1973) used to determine occupational hearing loss
30 and the percentage of loss established by the baseline audiometric examination. An amount paid to
31 an employee for occupational hearing loss by any other employer shall be credited against
32 compensation payable by the subject employer for the hearing loss. The employee shall not receive
33 in the aggregate greater compensation from all employers for occupational hearing loss than that
34 provided in this section for total occupational hearing loss. A payment shall not be paid to an

1 employee unless the employee has worked in excessive noise exposure employment for a total
2 period of at least one hundred eighty (180) days for the employer for whom compensation is
3 claimed.

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

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

16 (b) Where payments are required to be made under more than one clause of this section,
17 payments shall be made in a one-time payment unless the parties otherwise agree. Payment shall
18 be mailed within fourteen (14) days of the entry of a decree, order, or agreement of the parties and
19 a penalty of one hundred dollars (\$100) shall be assessed for every day that the payment is
20 delinquent.

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

24 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 amend sections of law relative to workers compensation benefits and
2 medical services to be provided by the employer, employees not entitled to compensation, and
3 additional compensation for specific injuries.

4 This act would take effect upon passage.

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