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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

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

Introduced By: Senators Ciccone, F. Lombardi, Bissaillon, and Britto

Date Introduced: May 09, 2024

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-33-17 and 28-33-18.2 of the General Laws in Chapter 28-33
2 entitled "Workers' Compensation — Benefits" are hereby amended to read as follows:

3 **28-33-17. Weekly compensation for total incapacity — Permanent total disability —**
4 **Dependents' allowances.**

5 (a)(1) For all injuries on or after January 1, 2022, while the incapacity for work resulting
6 from the injury is total, the employer shall pay the injured employee a weekly compensation equal
7 to sixty-two percent (62%) of his or her average weekly base wages, earnings, or salary, as
8 computed pursuant to the provisions of § 28-33-20. For all injuries on or before December 31,
9 2021, while the incapacity for work resulting from the injury is total, the employer shall pay the
10 injured employee a weekly compensation equal to seventy-five percent (75%) of his or her average
11 weekly spendable base wages, earnings, or salary, as computed pursuant to the provisions of § 28-
12 33-20. The amount may not exceed more than sixty percent (60%) of the state average weekly wage
13 of individuals in covered employment under the provisions of the Rhode Island employment
14 security act as computed and established by the Rhode Island department of labor and training,
15 annually, on or before May 31 of each year, under the provisions of § 28-44-6(a). Effective
16 September 1, 1974, the maximum rate for weekly compensation for total disability shall not exceed
17 sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the state average weekly wage, as computed and
18 established under the provisions of § 28-44-6(a). Effective September 1, 1975, the maximum rate

1 for weekly compensation for total disability shall not exceed one hundred percent (100%) of the
2 state average weekly wage, as computed and established under the provisions of § 28-44-6(a).
3 Effective September 1, 2007, the maximum rate for weekly compensation for total disability shall
4 not exceed one hundred fifteen percent (115%) of the state average weekly wage, as computed and
5 established under the provisions of § 28-44-6(a). Effective October 1, 2016, the maximum rate for
6 weekly compensation for total disability shall not exceed one hundred twenty percent (120%) of
7 the state average weekly wage as computed and established under the provisions of § 28-44-6(a),
8 and effective October 1, 2017, the maximum rate for weekly compensation for total disability shall
9 not exceed one hundred twenty-five percent (125%) of the state average weekly wage, as computed
10 and established under the provisions of § 28-44-6(a). If the maximum weekly benefit rate is not an
11 exact multiple of one dollar (\$1.00), then the rate shall be raised to the next higher multiple of one
12 dollar (\$1.00).

13 (2) The average weekly wage computed and established under § 28-44-6(a) is applicable
14 to injured employees whose injury occurred on or after September 1, 2000, and shall be applicable
15 for the full period during which compensation is payable.

16 (3)(i) "Spendable earnings" means the employee's gross, average weekly wages, earnings,
17 or salary, including any gratuities reported as income, reduced by an amount determined to reflect
18 amounts that would be withheld from the wages, earnings, or salary under federal and state income
19 tax laws, and under the Federal Insurance Contributions Act (FICA), 26 U.S.C. § 3101 et seq.,
20 relating to Social Security and Medicare taxes. In all cases, it is to be assumed that the amount
21 withheld would be determined on the basis of expected liability of the employee for tax for the
22 taxable year in which the payments are made without regard to any itemized deductions but taking
23 into account the maximum number of personal exemptions allowable.

24 (ii) Each year, the director shall publish tables of the average weekly wage and seventy-
25 five percent (75%) of spendable earnings that are to be in effect on May 10. These tables shall be
26 conclusive for the purposes of converting an average weekly wage into seventy-five percent (75%)
27 of spendable earnings. In calculating spendable earnings, the director shall have discretion to
28 exempt funds assigned to third parties by order of the family court pursuant to § 8-10-3 and funds
29 designated for payment of liens pursuant to § 28-33-27 upon submission of supporting evidence.

30 (b)(1) In the following cases, it shall, for the purpose of this section, be that the injury
31 resulted in permanent total disability:

32 (i) The total and irrecoverable loss of sight in both eyes or the reduction to one-tenth ($\frac{1}{10}$)
33 or less of normal vision with glasses;

34 (ii) The loss of both feet at or above the ankle;

- 1 (iii) The loss of both hands at or above the wrist;
- 2 (iv) The loss of one hand and one foot;
- 3 (v) An injury to the spine resulting in permanent and complete paralysis of the legs or arms;
- 4 and
- 5 (vi) An injury to the skull resulting in incurable imbecility or insanity.

6 (2) In all other cases, total disability shall be determined only if, as a result of the injury,

7 the employee is physically unable to earn any wages in any employment; provided, that in cases

8 where manifest injustice would otherwise result, total disability shall be determined when an

9 employee proves, taking into account the employee's age, education, background, abilities, and

10 training, that he or she is unable, on account of his or her compensable injury, to perform his or her

11 regular job and is unable to perform any alternative employment. The court may deny total

12 disability under this subsection without requiring the employer to identify particular alternative

13 employment.

14 (c)(1) Where the employee has persons conclusively presumed to be dependent upon him

15 or her, or in fact so dependent, the sum of fifteen dollars (\$15.00) shall be added to the weekly

16 compensation payable for total incapacity for each person wholly dependent on the employee;

17 ~~except that the sum of forty dollars (\$40.00) shall be added for~~ Effective January 1, 2025, the sum

18 to be added to the weekly compensation payable for total incapacity, for each person wholly

19 dependent on the employee, shall be raised to twenty-five dollars (\$25.00). For those receiving

20 benefits under § 28-33-12, the sum shall be forty dollars (\$40.00), but in no case shall the aggregate

21 of those amounts exceed eighty percent (80%) of the average weekly wage of the employee, except

22 that there shall be no limit for those receiving benefits under § 28-33-12.

23 (2) The dependency allowance shall be in addition to the compensation benefits for total

24 disability otherwise payable under the provisions of this section. The dependency allowance shall

25 be increased if the number of persons dependent upon the employee increases during the time that

26 weekly compensation benefits are being received.

27 (3) For the purposes of this section, the following persons shall be conclusively presumed

28 to be wholly dependent for support upon an employee:

29 (i) A wife upon a husband with whom she is living at the time of his injury, but only while

30 she is not working for wages during her spouse's total disability;

31 (ii) A husband upon a wife with whom he is living at the time of her injury, but only while

32 he is not working for wages during his spouse's total disability; and

33 (iii) Children under the age of eighteen (18) years, or over that age but physically or

34 mentally incapacitated from earning, if living with the employee, or, if the employee is bound or

1 ordered by law, decree, or order of court, or by any other lawful requirement, to support the
2 children, although living apart from them. Provided, that the payment of dependency benefits to a
3 dependent child over the age of eighteen (18) years shall continue as long as that child is
4 satisfactorily enrolled as a full-time student in an educational institution or an educational facility
5 duly accredited or approved by the appropriate state educational authorities at the time of
6 enrollment. Those payments shall not be continued beyond the age of twenty-three (23) years.
7 “Children,” within the meaning of this paragraph, also includes any children of the injured
8 employee conceived but not born at the time of the employee’s injury, and the compensation
9 provided for in this section shall be payable on account of any such children from the date of their
10 birth.

11 (d) “Dependents,” as provided in this section, does not include the spouse of the injured
12 employee except as provided in subsections (c)(3)(i) and (ii) of this section. In all other cases
13 questions of dependency shall be determined in accordance with the facts as the facts may be at the
14 time of the injury.

15 (e) The court, or any of its judges, may, in its or his or her discretion, order the insurer or
16 self-insurer to make payment ~~of the nine dollars (\$9.00) or fifteen dollars (\$15.00)~~ for those
17 receiving benefits under § 28-33-12 directly to the dependent.

18 (f)(1) Where any employee’s incapacity is total and has extended beyond fifty-two (52)
19 weeks, regardless of the date of injury, payments made to all totally incapacitated employees shall
20 be increased as of May 10, 1991, and annually on the tenth of May after that as long as the employee
21 remains totally incapacitated. The increase shall be by an amount equal to the total percentage
22 increase in the annual Consumer Price Index, United States City Average for Urban Wage Earners
23 and Clerical Workers, as formulated and computed by the Bureau of Labor Statistics of the United
24 States Department of Labor for the period of March 1 to February 28 each year.

25 (2) If the employee is subsequently found to be only partially incapacitated, the weekly
26 compensation benefit paid to the employee shall be equal to the payment in effect prior to his or
27 her most recent cost of living adjustment.

28 (3) “Index” as used in this section refers to the Consumer Price Index, United States City
29 Average for Urban Wage Earners and Clerical Workers, as that index is formulated and computed
30 by the Bureau of Labor Statistics of the United States Department of Labor.

31 (4) The May 10, 1991, increase shall be based upon the total percentage increase, if any,
32 in the annual Consumer Price Index for the period of March 1, 1990, to February 28, 1991.
33 Thereafter, increases shall be made on May 10 annually, based upon the percentage increase, if
34 any, in the index for the period March 1 to February 28.

1 (5) The computations in this section shall be made by the director of labor and training and
2 promulgated to insurers and employers making payments required by this section. Increases shall
3 be paid by insurers and employers without further order of the court. If payment payable under this
4 section is not paid within fourteen (14) days after the employer or insurer has been notified or it
5 becomes due, whichever is later, there shall be added to the unpaid payment an amount equal to
6 twenty percent (20%) of that amount, which shall be paid at the same time as, but in addition to,
7 the payment.

8 (6) This section applies only to payment of weekly indemnity benefits to employees as
9 described in subsection (f)(1) of this section, and does not apply to specific compensation payments
10 for loss of use or disfigurement or payment of dependency benefits or any other benefits payable
11 under the workers' compensation act.

12 (7) Notwithstanding any other provision of the general laws or public laws to the contrary,
13 any employee of the state of Rhode Island who is receiving workers' compensation benefits for
14 total incapacity, as a result of brain injury due to a violent assault, on or before July 19, 2005, shall
15 be entitled to receive the health insurance benefit he or she was entitled to at the time of the injury
16 for the duration of the total incapacity or until said employee and his or her spouse are both eligible
17 for Medicare.

18 **28-33-18.2. Suitable alternative employment.**

19 (a) When an employee has sustained an injury that entitles the employee to receive benefits
20 pursuant to § 28-33-18 or § 28-34-3, the employee may become capable of suitable alternative
21 employment as determined by the workers' compensation court, or may be offered suitable
22 alternative employment as agreed to by the employee and employer with written notice to the
23 director. The employer or insurer shall pay an injured employee who accepts suitable alternative
24 employment a weekly compensation equal to sixty-six and two-thirds percent (66 ²/₃%) of the
25 difference between the employee's average weekly wage, earnings, or salary before the injury and
26 his or her weekly wages, earnings, or salary from the suitable alternative employment. Effective
27 January 1, 2025, the employer or insurer shall pay an injured employee who accepts suitable
28 alternative employment a weekly compensation equal to sixty-two percent (62%) of the difference
29 between the employee's average weekly wage, earnings, or salary before the injury and his or her
30 weekly wages, earnings, or salary from the suitable alternative employment.

31 (b) The acceptance of suitable alternative employment shall not be mandatory if it results
32 in the inequitable forfeiture or loss of seniority with the employer or a monetary benefit or other
33 substantial benefit including, but not limited to, vested pension and/or profit sharing contributions,
34 arising from the employment relationship.

1 (c) If suitable alternative employment as determined by the workers' compensation court
2 has been offered to the employee and the employee has refused to accept the employment, then the
3 workers' compensation court shall, in fixing the amount of compensation payable subsequent to
4 the refusal, treat earnings capacity as post-injury earnings, requiring the employer or insurer to pay
5 the injured employee a weekly compensation equal to sixty-six and two-thirds percent (66 ²/₃%) of
6 the difference between the employee's average weekly wage, earnings, or salary before the injury
7 and the weekly earning capacity. In no case shall increases in payments made to an injured
8 employee pursuant to § 28-33-18.3(b)(1) or § 28-33-17(f) be considered in the calculation of the
9 weekly compensation due pursuant to this section. The fact that the employee is undergoing
10 rehabilitation does not by itself exempt the employee from the provisions of this subsection.

11 (d) If the suitable alternative employment is terminated by the employer for reasons other
12 than misconduct by the employee, the injured employee shall be entitled to be compensated from
13 the employer in whose employ he or she was injured at the rate to which the employee was entitled
14 prior to acceptance of the employment after notice by the employee to the employer in whose
15 employ he or she was injured. The payments shall be made no later than fourteen (14) days after
16 the notice. If suitable alternative employment is terminated by the employer for misconduct of the
17 employee, or by the employee, the compensation payable to the employee shall not exceed that
18 payable during continuance of suitable alternative employment. Upon request to the workers'
19 compensation court, the employee shall have the right to a determination as to whether or not the
20 termination was justified. Any employee who accepts suitable alternative employment with his or
21 her employer of record shall continue to maintain the seniority status and all rights incidental to it
22 that the employee enjoyed prior to his or her injury, except that these rights shall not exceed the
23 current rights of a similar employee with equal seniority.

24 SECTION 2. Section 28-35-58 of the General Laws in Chapter 28-35 entitled "Workers'
25 Compensation — Procedure" is hereby amended to read as follows:

26 **28-35-58. Liability of third person for damages.**

27 (a) Where the injury for which compensation is payable under chapters 29 — 38 of this
28 title was caused under circumstances creating a legal liability in some person other than the
29 employer to pay damages in respect of the injury, the employee may take proceedings, both against
30 that person to recover damages and against any person liable to pay compensation under those
31 chapters for that compensation, and the employee shall be entitled to receive both damages and
32 compensation. The employee, in recovering damages either by judgment or settlement from the
33 person so liable to pay damages, shall reimburse the person by whom the compensation was paid
34 to the extent of the compensation paid as of the date of the judgment or settlement and the receipt

1 of those damages by the employee shall not bar future compensation. An insurer shall be entitled
2 to suspend the payment of compensation benefits payable to the employee when the damages
3 recovered by judgment or settlement from the person so liable to pay damages exceeds the
4 compensation paid as of the date of the judgment or settlement. The suspension paid shall be the
5 number of weeks that are equal to the excess damages paid divided by the employee's weekly
6 compensation rate; however, during the period of suspension the employee shall be entitled to
7 receive the benefit of all medical and hospital payments on his or her behalf. If the employee has
8 been paid compensation under those chapters, the person by whom the compensation was paid shall
9 be entitled to indemnity from the person liable to pay damages, and to the extent of that indemnity
10 shall be subrogated to the rights of the employee to recover those damages. When money has been
11 recovered either by judgment or by settlement by an employee from the person liable to pay
12 damages, by suit or settlement, and the employee is required to reimburse the person by whom the
13 compensation was paid, the employee or his or her attorney shall be entitled to withhold from the
14 amount to be reimbursed that proportion of the costs, witness expenses, and other out-of-pocket
15 expenses and attorney fees which the amount which the employee is required to reimburse the
16 person by whom compensation was paid bears to the amount recovered from the third party.

17 (b) In any case in which the employee or, in case of death, the administrator of the
18 employee's estate neglects to exercise the employee's right of action by failing to file a lawsuit
19 against such third person within two (2) years and eight (8) months after the injury, the self-insured
20 employer or the employer's insurance carrier may so proceed and shall be subrogated to the rights
21 of the injured employee or, in case of death, to the rights of the administrator to recover against
22 such person; provided, that no subrogation action shall commence unless at least twenty-six (26)
23 weeks prior to the expiration of the two (2) years and eight (8) months the self-insured employer
24 or the employer's insurance carrier has notified the employee, or in the case of death, the
25 administrator of the employee's estate, in writing by personal service or certified mail, that failure
26 to commence such action within two (2) years and eight (8) months after the injury will operate as
27 an assignment of the right of action to the self-insured employer or the employer's insurance carrier.
28 Upon filing the lawsuit, the attorney for the self-insured employer or the employer's insurance
29 carrier shall notify the employee in writing by personal service or certified mail of the action and
30 the name of the court where it was filed and the employee may join as a plaintiff in the action within
31 thirty days after the notification, and, if the employee fails to join, the right of joinder shall abate.
32 The right of the employee, or in case of death, the administrator of the employee's estate, to be
33 fully compensated for the damages sustained shall be fully preserved as outlined in subsection (a).

34 (c) If the self-insured employer or the employer's insurance carrier recovers from these

1 other personal damages or benefits, after expenses and costs of action have been paid, in excess of
2 the amount of the lien as defined in this section, then that excess shall be paid to the injured
3 employee or, in the case of death, to the administrator of the employee's estate for distribution.

4 (d) In the event there is a dispute over the reimbursement owed or the period of suspension
5 going forward, the court, by agreement of the parties and upon petition by either the employee or
6 the employer and/or its insurance carrier, shall assign the dispute to the workers' compensation
7 court's mediation program, in accordance with the rules and procedures established by the court.
8 Nothing herein shall preclude any party or attorney from pursuing any action otherwise available.

9 SECTION 3. Section 28-37-10 of the General Laws in Chapter 28-37 entitled "Workers'
10 Compensation Administrative Fund" is hereby amended to read as follows:

11 **28-37-10. Dependents' allowances to totally incapacitated persons.**

12 Whenever an injured employee suffering total incapacity ceases to receive payment under
13 the Rhode Island temporary disability insurance act, chapters 39 — 41 of title 28, he or she shall
14 receive compensation in addition to compensation for total incapacity, not exceeding ~~five dollars~~
15 ~~(\$5.00)~~ twenty-five dollars (\$25.00) per week for each child wholly or partially dependent upon
16 the wages, earnings, or salary of the employee, including an adopted or stepchild, under the age of
17 eighteen (18) years, or over that age but physically or mentally incapacitated from earning, but not
18 exceeding a total of ~~fifteen dollars (\$15.00)~~ seventy-five dollars (\$75.00) per week, which
19 additional compensation shall be paid out of the fund established under § 28-37-1; provided, that
20 any injured employee suffering total incapacity as the consequence of an injury sustained on or
21 after September 1, 1969, shall not be eligible for this additional compensation.

22 SECTION 4. 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 four (4) sections relating to the workers' compensation benefits
2 dealing with increasing the amount of dependent benefits payable to a totally disabled employee
3 comprising this year's annual omnibus bill submitted on behalf of the workers' compensation
4 advisory council.

5 This act would take effect upon passage.

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