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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- MINIMUM WAGES

Introduced By: Senators Quezada, and Calkin

Date Introduced: February 25, 2021

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-12-2 of the General Laws in Chapter 28-12 entitled "Minimum
2 Wages" is hereby amended to read as follows:

3 **28-12-2. Definitions.**

4 As used in this chapter:

5 (1) "Advisory board" means a board created as provided in § 28-12-6;

6 (2) "Commissioner" means the minimum-wage commissioner appointed by the director of
7 labor and training as chief of the division of labor standards;

8 (3) "Director" means the director of labor and training, or his or her duly authorized
9 representative;

10 (4) "Employ" means to suffer or to permit to work;

11 (5) "Employee" ~~includes any individual suffered or permitted to work by an employer;~~
12 means any person providing labor or services for remuneration, as opposed to an independent
13 contractor, unless the hiring entity can establish that all of the following conditions are satisfied:

14 (i) The person is free from the control and direction of the hiring entity in connection with
15 the performance of the work, both under the contract for the performance of the work and in fact;

16 (ii) The person performs work that is outside the usual course of the hiring entity's business;
17 and

18 (iii) The person is customarily engaged in an independently established trade, occupation,
19 or business of the same nature as that involved in the work performed.

1 (6) "Employee" shall not include:

2 (i) Any individual employed in domestic service or in or about a private home;

3 (ii) Any individual employed by the United States;

4 (iii) Any individual engaged in the activities of an educational, charitable, religious, or
5 nonprofit organization where the employer-employee relationship does not, in fact, exist, or where
6 the services rendered to the organizations are on a voluntary basis;

7 (iv) Newspaper deliverers on home delivery, shoe shiners in shoe shine establishments,
8 caddies on golf courses, pin persons in bowling alleys, ushers in theatres;

9 (v) Traveling salespersons or outside salespersons;

10 (vi) Service performed by an individual in the employ of his or her son, daughter, or spouse
11 and service performed by a child under the age of twenty-one (21) in the employ of his or her father
12 or mother;

13 (vii) Any individual employed between May 1 and October 1 in a resort establishment that
14 regularly serves meals to the general public and that is open for business not more than six (6)
15 months a year;

16 (viii) Any individual employed by an organized camp that does not operate for more than
17 seven (7) months in any calendar year. However, this exemption does not apply to individuals
18 employed by the camp on an annual, full-time basis. "Organized camp" means any camp, except a
19 trailer camp, having a structured program including, but not limited to, recreation, education, and
20 religious, or any combination of these.

21 (7) "Employer" includes any individual, partnership, association, corporation, business
22 trust, or any person, or group of persons, acting directly, or indirectly, in the interest of an employer,
23 in relation to an employee;

24 (8) "Occupation" means any occupation, service, trade, business, industry, or branch or
25 group of industries or employment or class of employment in which individuals are gainfully
26 employed;

27 (9) "Wage" means compensation due to an employee by reason of his or her employment.

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

30 **28-29-2. Definitions.**

31 In chapters 29 -- 38 of this title, unless the context otherwise requires:

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

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

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

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

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

19 (4) "Employee" means any person who has entered into the employment of or works under
20 contract of service or apprenticeship with any employer, except that in the case of a city or town
21 other than the city of Providence it shall only mean that class or those classes of employees as may
22 be designated by a city, town, or regional school district in a manner provided in this chapter to
23 receive compensation under chapters 29 -- 38 of this title. It also means any person providing labor
24 or services for remuneration, as opposed to an independent contractor, unless the hiring entity can
25 establish that all of the following conditions are satisfied:

26 (i) The person is free from the control and direction of the hiring entity in connection with
27 the performance of the work, both under the contract for the performance of the work and in fact;

28 (ii) The person performs work that is outside the usual course of the hiring entity's business;
29 and

30 (iii) The person is customarily engaged in an independently established trade, occupation,
31 or business of the same nature as that involved in the work performed. Any person employed by

32 the state of Rhode Island, except for sworn employees of the Rhode Island State Police, or by the
33 Rhode Island Airport Corporation who is otherwise entitled to the benefits of chapter 19 of title 45
34 shall be subject to the provisions of chapters 29 -- 38 of this title for all case management procedures

1 and dispute resolution for all benefits. The term "employee" does not include any individual who
2 is a shareholder or director in a corporation, general or limited partners in a general partnership, a
3 registered limited liability partnership, a limited partnership, or partners in a registered limited
4 liability limited partnership, or any individual who is a member in a limited liability company.
5 These exclusions do not apply to shareholders, directors and members who have entered into the
6 employment of or who work under a contract of service or apprenticeship within a corporation or
7 a limited liability company. The term "employee" also does not include a sole proprietor,
8 independent contractor, or a person whose employment is of a casual nature, and who is employed
9 other than for the purpose of the employer's trade or business, or a person whose services are
10 voluntary or who performs charitable acts, nor shall it include the members of the regularly
11 organized fire and police departments of any town or city except for appeals from an order of the
12 retirement board filed pursuant to the provisions of § 45-21.2-9; provided, however, that it shall
13 include the members of the police and aircraft rescue and firefighting (ARFF) units of the Rhode
14 Island Airport Corporation. Whenever a contractor has contracted with the state, a city, town, or
15 regional school district any person employed by that contractor in work under contract shall not be
16 deemed an employee of the state, city, town, or regional school district as the case may be. Any
17 person who on or after January 1, 1999, was an employee and became a corporate officer shall
18 remain an employee, for purposes of these chapters, unless and until coverage under this act is
19 waived pursuant to § 28-29-8(b) or § 28-29-17. Any person who is appointed a corporate officer
20 between January 1, 1999, and December 31, 2001, and was not previously an employee of the
21 corporation, will not be considered an employee, for purposes of these chapters, unless that
22 corporate officer has filed a notice pursuant to § 28-29-19(c). In the case of a person whose services
23 are voluntary or who performs charitable acts, any benefit received, in the form of monetary
24 remuneration or otherwise, shall be reportable to the appropriate taxation authority but shall not be
25 deemed to be wages earned under contract of hire for purposes of qualifying for benefits under
26 chapters 29 -- 38 of this title. Any reference to an employee who had been injured shall, where the
27 employee is dead, include a reference to his or her dependents as defined in this section, or to his
28 or her legal representatives, or, where he or she is a minor or incompetent, to his or her conservator
29 or guardian. A "seasonal occupation" means those occupations in which work is performed on a
30 seasonal basis of not more than sixteen (16) weeks.

31 (5) "Employer" includes any person, partnership, corporation, or voluntary association, and
32 the legal representative of a deceased employer; it includes the state, and the city of Providence. It
33 also includes each city, town, and regional school district in the state that votes or accepts the
34 provisions of chapters 29 -- 38 of this title in the manner provided in this chapter or is a party to an

1 appeal from an order of the retirement board filed pursuant to the provisions of § 45-21.2-9.

2 (6) "General or special employer":

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

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

8 (iii) Whenever there is a general employer and special employer wherein the general
9 employer supplies to the special employer an employee and the general employer pays or is
10 obligated to pay the wages or salaries of the supplied employee, then, notwithstanding the fact that
11 direction and control is in the special employer and not the general employer, the general employer,
12 if it is subject to the provisions of the Workers' Compensation Act or has accepted that Act, shall
13 be deemed to be the employer as set forth in subdivision (5) of this section and both the general
14 and special employer shall be the employer for purposes of §§ 28-29-17 and 28-29-18.

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

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

31 (ii) An injury to an employee while voluntarily participating in a private, group, or
32 employer-sponsored carpool, vanpool, commuter bus service, or other rideshare program, having
33 as its sole purpose the mass transportation of employees to and from work shall not be deemed to
34 have arisen out of and in the course of employment. Nothing in the foregoing provision shall be

1 held to deny benefits under chapters 29 -- 38 and chapter 47 of this title to employees such as
2 drivers, mechanics, and others who receive remuneration for their participation in the rideshare
3 program. Provided, that the foregoing provision shall not bar the right of an employee to recover
4 against an employer and/or driver for tortious misconduct.

5 (8) "Maximum medical improvement" means a point in time when any medically
6 determinable physical or mental impairment as a result of injury has become stable and when no
7 further treatment is reasonably expected to materially improve the condition. Neither the need for
8 future medical maintenance nor the possibility of improvement or deterioration resulting from the
9 passage of time and not from the ordinary course of the disabling condition, nor the continuation
10 of a preexisting condition precludes a finding of maximum medical improvement. A finding of
11 maximum medical improvement by the workers' compensation court may be reviewed only where
12 it is established that an employee's condition has substantially deteriorated or improved.

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

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

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

23 SECTION 3. Section 28-39-2 of the General Laws in Chapter 28-39 entitled "Temporary
24 Disability Insurance - General Provisions" is hereby amended to read as follows:

25 **28-39-2. Definitions.**

26 The following words and phrases, as used in chapters 39 -- 41 of this title, have the
27 following meanings unless the context clearly requires otherwise:

28 (1) "Average weekly wage" means the amount determined by dividing the individual's total
29 wages earned for services performed in employment within his or her base period by the number
30 of that individual's credit weeks within the base period;

31 (2) "Base period" with respect to an individual's benefit year when the benefit year begins
32 on or after October 7, 1990, means the first four (4) of the most recently completed five (5) calendar
33 quarters immediately preceding the first day of an individual's benefit year; provided, that for any
34 individual's benefit year when the benefit year begins on or after October 4, 1992, and for any

1 individual deemed monetarily ineligible for benefits under the "base period" as defined in this
2 subdivision, the department shall make a re-determination of entitlement based upon an alternate
3 base period which consists of the last four (4) completed calendar quarters immediately preceding
4 the first day of the claimant's benefit year. Notwithstanding anything contained to the contrary in
5 this subdivision, the base period shall not include any calendar quarter previously used to establish
6 a valid claim for benefits; provided, however, that the "base period" with respect to members of the
7 United States military service, the Rhode Island National Guard, or a United States military reserve
8 force, and who served in a United States declared combat operation during their military service,
9 who file a claim for benefits following their release from their state or federal active military service
10 and who are deemed to be monetarily ineligible for benefits under this section, shall mean the first
11 four (4) of the most recently completed five (5) calendar quarters immediately preceding the first
12 day the individual was called into that state or federal active military service; provided, that for any
13 individual deemed monetarily ineligible for benefits under the "base period" as defined in this
14 section, the department shall make a re-determination of entitlement based upon an alternative base
15 period which consists of the last four (4) completed calendar quarters immediately preceding the
16 first day the claimant was called into that state or federal active military service. Notwithstanding
17 any provision of this section of the general or public laws to the contrary, the base period shall not
18 include any calendar quarter previously used to establish a valid claim for benefits;

19 (3) "Benefit" means the money payable, as provided in chapters 39 -- 41 of this title, to an
20 individual as compensation for his or her unemployment caused by sickness;

21 (4) "Benefit credits" means the total amount of money payable to an individual as benefits,
22 as provided in § 28-41-7;

23 (5) "Benefit rate" means the money payable to an individual as compensation, as provided
24 in chapters 39 -- 41 of this title, for his or her wage losses with respect to any week during which
25 his or her unemployment is caused by sickness;

26 (6) "Benefit year" with respect to any individual who does not already have a benefit year
27 in effect, and who files a valid claim for benefits as of November 16, 1958, or any later date, means
28 fifty-two (52) consecutive calendar weeks, the first of which shall be the week containing the day
29 as of which he or she first files that valid claim in accordance with regulations adopted as
30 subsequently prescribed; provided, that for any benefit year beginning on or after October 7, 1990,
31 the benefit year shall be fifty-three (53) consecutive calendar weeks if the subsequent filing of a
32 new valid claim immediately following the end of a previous benefit year would result in the
33 overlapping of any quarter of the base period of the prior new claim. In no event shall a new benefit
34 year begin prior to the Sunday next following the end of the old benefit year;

1 (i) For benefit years that begin on or after July 1, 2012, an individual's benefit year will
2 begin on the Sunday of the calendar week in which an individual first became unemployed due to
3 sickness and for which the individual has filed a valid claim for benefits;

4 (7) "Board" means the board of review as created under chapter 19 of title 42;

5 (8) "Calendar quarter" has the same definition as contained in chapter 42 of this title;

6 (9) "Credit week" means any week within an individual's base period in which that
7 individual earns wages amounting to at least twenty (20) times the minimum hourly wage as
8 defined in chapter 12 of this title, for performing services in employment for one or more employers
9 subject to chapters 39 -- 41 of this title;

10 (10) "Director" means the director of the department of labor and training;

11 (11) "Employee" means any person ~~who is or has been employed by an employer subject~~
12 ~~to chapters 39 -- 41 of this title and in employment subject to those chapters;~~ providing labor or
13 services for remuneration, as opposed to an independent contractor, unless the hiring entity can
14 establish that all of the following conditions are satisfied:

15 (i) The person is free from the control and direction of the hiring entity in connection with
16 the performance of the work, both under the contract for the performance of the work and in fact;

17 (ii) The person performs work that is outside the usual course of the hiring entity's business;
18 and

19 (iii) The person is customarily engaged in an independently established trade, occupation,
20 or business of the same nature as that involved in the work performed.

21 (12) "Employer" means any employing unit that is an employer under chapters 42 -- 44 of
22 this title;

23 (13) "Employing unit" has the same definition as contained in chapter 42 of this title and
24 includes any governmental entity that elects to become subject to the provisions of chapters 39 --
25 41 of this title, in accordance with the provisions of §§ 28-39-3.1 and 28-39-3.2;

26 (14) "Employment" has the same definition as contained in chapter 42 of this title;

27 (15) "Employment office" has the same definition as contained in chapter 42 of this title;

28 (16) "Fund" means the Rhode Island temporary disability insurance fund established by
29 this chapter;

30 (17) "Partial unemployment due to sickness." For weeks beginning on or after January 1,
31 2006 an individual shall be deemed partially unemployed due to sickness in any week of less than
32 full-time work if he or she fails to earn in wages for services for that week an amount equal to the
33 weekly benefit rate for total unemployment due to sickness to which he or she would be entitled if
34 totally unemployed due to sickness and eligible.

1 (i) For the purposes of this subdivision and subdivision (22) of this section, "Wages"
2 includes only that part of remuneration for any work, which is in excess of one-fifth (1/5) of the
3 weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar
4 (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one
5 week, and "services" includes only that part of any work for which remuneration in excess of one-
6 fifth (1/5) of the weekly benefit rate for total unemployment, rounded to the next lower multiple of
7 one dollar (\$1.00), to which the individual would be entitled if totally unemployed and eligible in
8 any one week is payable; provided, that nothing contained in this paragraph shall permit any
9 individual to whom remuneration is payable for any work performed in any week in an amount
10 equal to, or greater than, his or her weekly benefit rate to receive benefits under this subdivision
11 for that week.

12 (18) "Reserve fund" means the temporary disability insurance reserve fund established by
13 § 28-39-7;

14 (19) "Services" means all endeavors undertaken by an individual that are paid for by
15 another or with respect to which the individual performing the services expects to receive wages or
16 profits;

17 (20) "Sickness." An individual shall be deemed to be sick in any week in which, because
18 of his or her physical or mental condition, including pregnancy, he or she is unemployed and unable
19 to perform his or her regular or customary work or services;

20 (21)(i) "Taxes" means the money payments required by chapters 39 -- 41 of this title, to be
21 made to the temporary disability insurance fund or to the temporary disability insurance reserve
22 fund.

23 (ii) Wherever and whenever in chapters 39 -- 41 of this title, the words "contribution"
24 and/or "contributions" appear, those words shall be construed to mean the "taxes," as defined in
25 this subdivision, which are the money payments required by those chapters to be made to the
26 temporary disability insurance fund or to the temporary disability insurance reserve fund;

27 (22) "Wages" has the same definition as contained in chapter 42 of this title; provided, that
28 no individual shall be denied benefits under chapters 39 -- 41 of this title because his or her
29 employer continues to pay to that individual his or her regular wages, or parts of them, while he or
30 she is unemployed due to sickness and unable to perform his or her regular or customary work or
31 services. The amount of any payments, whether or not under a plan or system, made to or on behalf
32 of an employee by his or her employer after the expiration of six (6) calendar months following the
33 last calendar month in which the employee performed actual bona fide personal services for his or
34 her employer, shall not be deemed to be wages either for the purpose of paying contributions

1 thereon under chapter 40 of this title, or for the purpose of being used as a basis for paying benefits
2 under chapter 41 of this title; and

3 (23) "Week" has the same definition as contained in chapter 42 of this title.

4 SECTION 4. Section 28-42-3 of the General Laws in Chapter 28-42 entitled "Employment
5 Security - General Provisions" is hereby amended to read as follows:

6 **28-42-3. Definitions.**

7 The following words and phrases, as used in chapters 42 -- 44 of this title, have the
8 following meanings unless the context clearly requires otherwise:

9 (1) "Administration account" means the employment security administration account
10 established by this chapter;

11 (2) "Average weekly wage" means the amount determined by dividing the individual's total
12 wages earned for service performed in employment within his or her base period by the number of
13 that individual's credit weeks within his or her base period;

14 (3) "Base period," with respect to an individual's benefit year, means the first four (4), of
15 the most recently completed five (5) calendar quarters immediately preceding the first day of an
16 individual's benefit year. For any individual's benefit year, and for any individual deemed
17 monetarily ineligible for benefits for the "base period" as defined in this subdivision, the department
18 shall make a re-determination of entitlement based upon the alternate, base period that consists of
19 the last four (4) completed calendar quarters immediately preceding the first day of the claimant's
20 benefit year. Notwithstanding anything contained to the contrary in this subdivision, the base period
21 shall not include any calendar quarter previously used to establish a valid claim for benefits;
22 provided, that notwithstanding any provision of chapters 42 -- 44 of this title to the contrary, for
23 the benefit years beginning on or after October 4, 1992, whenever an individual who has received
24 workers' compensation benefits is entitled to reinstatement under § 28-33-47, but the position to
25 which reinstatement is sought does not exist or is not available, the individual's base period shall
26 be determined as if the individual filed for benefits on the date of the injury;

27 (4) "Benefit" means the money payable to an individual as compensation for his or her
28 wage losses due to unemployment as provided in these chapters;

29 (5) "Benefit credits" means the total amount of money payable to an individual as benefits,
30 as determined by § 28-44-9;

31 (6) "Benefit rate" means the money payable to an individual as compensation, as provided
32 in chapters 42 -- 44 of this title, for his or her wage losses with respect to any week of total
33 unemployment;

34 (7) "Benefit year," with respect to any individual who does not already have a benefit year

1 in effect and who files a valid claim for benefits, means fifty-two (52) consecutive calendar weeks,
2 the first of which shall be the week containing the day as of which he or she first files a valid claim
3 in accordance with regulations adopted as hereinafter prescribed; provided, that the benefit year
4 shall be fifty-three (53) weeks if the filing of a new, valid claim would result in overlapping any
5 quarter of the base period of a prior new claim previously filed by the individual. In no event shall
6 a new benefit year begin prior to the Sunday next following the end of the old benefit year;

7 (8) "Calendar quarter" means the period of three (3) consecutive calendar months ending
8 March 31, June 30, September 30, and December 31; or the equivalent thereof, in accordance with
9 regulations as subsequently prescribed;

10 (9) "Contributions" means the money payments to the state employment security fund
11 required by those chapters;

12 (10) "Credit amount," effective July 6, 2014, means earnings by the individual in an amount
13 equal to at least eight (8) times the individual's weekly benefit rate.

14 (11) "Credit week," prior to July 1, 2012, means any week within an individual's base
15 period in which that individual earned wages amounting to at least twenty (20) times the minimum
16 hourly wage as defined in chapter 12 of this title for performing services in employment for one or
17 more employers subject to chapters 42 -- 44 of this title, and for the period July 1, 2012, through
18 July 5, 2014, means any week within an individual's base period in which that individual earned
19 wages amounting to at least his or her weekly benefit rate for performing services in employment
20 for one or more employers subject to chapters 42 -- 44 of this title;

21 (12) "Crew leader," for the purpose of subdivision (19) of this section, means an individual
22 who:

23 (i) Furnishes individuals to perform service in agricultural labor for any other person;

24 (ii) Pays (either on his or her own behalf or on behalf of that other person) the individuals
25 so furnished by him or her for the service in agricultural labor performed by them; and

26 (iii) Has not entered into a written agreement with that other person (farm operator) under
27 which that individual (crew leader) is designated as an employee of that other person (farm
28 operator).

29 (13) "Director" means the head of the department of labor and training or his or her
30 authorized representative;

31 (14) "Domestic service employment." "Employment" includes domestic service in a
32 private home performed for a person who paid cash remuneration of one thousand dollars (\$1,000)
33 or more in any calendar quarter in the current calendar year, or the preceding calendar year, to
34 individuals employed in that domestic service;

1 (15) "Employee" means any person ~~who is, or has been, employed by an employer subject~~
2 ~~to those chapters and in employment subject to those chapters;~~ providing labor or services for
3 remuneration, as opposed to an independent contractor, unless the hiring entity can establish that
4 all of the following conditions are satisfied:

5 (i) The person is free from the control and direction of the hiring entity in connection with
6 the performance of the work, both under the contract for the performance of the work and in fact;

7 (ii) The person performs work that is outside the usual course of the hiring entity's business;
8 and

9 (iii) The person is customarily engaged in an independently established trade, occupation,
10 or business of the same nature as that involved in the work performed.

11 (16) "Employer" means:

12 (i) Any employing unit that was an employer as of December 31, 1955;

13 (ii) Any employing unit that for some portion of a day on and after January 1, 1956, has,
14 or had, in employment, within any calendar year, one or more individuals; except, however, for
15 "domestic service employment," as defined in subdivision (14) of this section;

16 (iii) For the effective period of its election pursuant to § 28-42-12, any other employing
17 unit that has elected to become subject to chapters 42 -- 44 of this title;

18 (iv) Any employing unit not an employer by reason of any other paragraph of this
19 subdivision for which, within either the current or preceding calendar year, service is, or was,
20 performed with respect to which that employing unit is liable for any federal tax against which
21 credit may be taken for contributions required to be paid into this state's employment security fund;
22 or which, as a condition for approval of chapters 42 -- 44 of this title for full tax credit against the
23 tax imposed by the Federal Unemployment Tax Act, 26 U.S.C. § 3301 et seq., is required, pursuant
24 to that act, to be an "employer" under chapters 42 -- 44 of this title;

25 (17) "Employing unit" means any person, partnership, association, trust, estate, or
26 corporation, whether domestic or foreign, or its legal representative, trustee in bankruptcy, receiver,
27 or trustee, or the legal representative of a deceased person, that has, or had, in his or her employ,
28 one or more individuals. For the purposes of subdivision (14) of this section, a private home shall
29 be considered an employing unit only if the person for whom the domestic service was performed
30 paid cash remuneration of one thousand dollars (\$1,000) or more in any calendar quarter in the
31 current calendar year, or the preceding calendar year, to individuals employed in that domestic
32 service in that private home;

33 (18)(i) "Employment," subject to §§ 28-42-4 -- 28-42-10, means service, including service
34 in interstate commerce, performed for wages, or under any contract of hire, written or oral, express

1 or implied; provided, that service performed shall also be deemed to constitute employment for all
2 the purposes of chapters 42 -- 44 of this title if performed by an individual in the employ of a
3 nonprofit organization as described in subdivision (25) of this section, except as provided in § 28-
4 42-8(7).

5 (ii) Notwithstanding any other provisions of this section, "Employment" also means service
6 with respect to which a tax is required to be paid under any federal law imposing a tax against
7 which credit may be taken for contributions required to be paid into this state's employment security
8 fund or which, as a condition for full tax credit against the tax imposed by the Federal
9 Unemployment Tax Act, is required to be covered under chapters 42 -- 44 of this title;

10 (iii) Employment not to include owners. Employment does not include services performed
11 by sole proprietors (owners), partners in a partnership, limited liability company -- single member
12 filing as a sole proprietor with the IRS, or members of a limited liability company filing as a
13 partnership with the IRS.

14 (19) "Employment -- Crew leader." For the purposes of subdivision (12) of this section:

15 (i) Any individual who is a member of a crew furnished by a crew leader to perform service
16 in agricultural labor for any other person shall be treated as an employee of that crew leader if:

17 (A) That crew leader holds a valid certificate of registration under the Migrant and Seasonal
18 Agricultural Worker Protection Act, 29 U.S.C. § 1801 et seq., or substantially all members of that
19 crew operate or maintain tractors, mechanized harvesting, or crop-dusting equipment, or any other
20 mechanized equipment that is provided by that crew leader; and

21 (ii) That individual is not an employee of that other person within the meaning of
22 subdivision (15) of this section; and

23 (iii) In the case of any individual who is furnished by a crew leader to perform service in
24 agricultural labor for any other person and who is not treated as an employee of that crew leader:

25 (A) That other person, and not the crew leader, shall be treated as the employer of that
26 individual; and

27 (B) That other person shall be treated as having paid cash remuneration to that individual
28 in an amount equal to the amount of cash remuneration paid to that individual by the crew leader
29 (either on his or her own behalf or on behalf of that other person) for the service in agricultural
30 labor performed for that other person;

31 (20) "Employment office" means a free, public-employment office, or its branch, operated
32 by the director or by this state as part of a system of free, public-employment offices, or any other
33 agency that the director may designate with the approval of the Social Security Administration;

34 (21) "Fund" means the employment security fund established by this chapter;

1 (22) "Governmental entity" means state and local governments in this state and includes
2 the following:

3 (i) The state of Rhode Island or any of its instrumentalities, or any political subdivision of
4 the state, or any of its instrumentalities;

5 (ii) Any instrumentality of more than one of these entities; or

6 (iii) Any instrumentality of any of these entities and one or more other states or political
7 subdivisions;

8 (23) "Hospital" means an institution that has been licensed, certified, or approved by the
9 department of health as a hospital;

10 (24)(i) "Institution of higher education" means an educational institution in this state that:

11 (A) Admits, as regular students, only individuals having a certificate of graduation from a
12 high school, or the recognized equivalent of such certificate;

13 (B) Is legally authorized within this state to provide a program of education beyond high
14 school;

15 (C) Provides:

16 (I) An educational program for which it awards a bachelor's or higher degree, or a program
17 that is acceptable for full credit toward such a degree;

18 (II) A program of post-graduate or post-doctoral studies; or

19 (III) A program of training to prepare students for gainful employment in a recognized
20 occupation; and

21 (D) Is a public or other nonprofit institution.

22 (ii) Notwithstanding any of the preceding provisions of this subdivision, all colleges and
23 universities in this state are institutions of higher education for purposes of this section;

24 (25) "Nonprofit organization" means an organization, or group of organizations, as defined
25 in 26 U.S.C. § 501(c)(3), that is exempt from income tax under 26 U.S.C. § 501(a);

26 (26)(i) "Partial unemployment." An employee shall be deemed partially unemployed in any
27 week of less than full-time work if he or she fails to earn in wages for that week an amount equal
28 to the weekly benefit rate for total unemployment to which he or she would be entitled if totally
29 unemployed and eligible.

30 (ii) For the purposes of this subdivision and subdivision (28) of this section, "Wages"
31 includes only that part of remuneration for any work that is in excess of one-fifth (1/5) of the weekly
32 benefit rate for total unemployment, rounded to the next lower multiple of one dollar (\$1.00), to
33 which the individual would be entitled if totally unemployed and eligible in any one week, and
34 "services" includes only that part of any work for which remuneration in excess of one-fifth (1/5)

1 of the weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar
2 (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one
3 week is payable; provided, that nothing contained in this paragraph shall permit any individual to
4 whom remuneration is payable for any work performed in any week in an amount equal to or greater
5 than his or her weekly benefit rate to receive benefits under this subdivision for that week.

6 (iii) Notwithstanding anything contained to the contrary in this subdivision, "Services," as
7 used in this subdivision and in subdivision (28) of this section, does not include services rendered
8 by an individual under the exclusive supervision of any agency of this state, or any of its political
9 subdivisions, by which the services are required solely for the purpose of affording relief, support,
10 or assistance to needy individuals performing those services, or services performed by members of
11 the national guard and organized reserves in carrying out their duties in weekly drills as members
12 of those organizations. "Wages," as used in this subdivision and in subdivision (28) of this section,
13 does not include either remuneration received by needy individuals for rendering the
14 aforementioned services when that remuneration is paid exclusively from funds made available for
15 that purpose out of taxes collected by this state or any of its political subdivisions, or remuneration
16 received from the federal government by members of the national guard and organized reserves, as
17 drill pay, including longevity pay and allowances;

18 (27) "Payroll" means the total amount of all wages paid by the employer to his or her
19 employees for employment;

20 (28) "Total unemployment." An individual shall be deemed totally unemployed in any
21 week in which he or she performs no services (as used in subdivision (26) of this section) and for
22 which he or she earns no wages (as used in subdivision (26) of this section), and in which he or she
23 cannot reasonably return to any self-employment in which he or she has customarily been engaged;

24 (29) "Wages" means all remuneration paid for personal services on or after January 1, 1940,
25 including commissions and bonuses and the cash value of all remuneration paid in any medium
26 other than cash, and all other remuneration that is subject to a tax under a federal law imposing a
27 tax against which credit may be taken for contributions required to be paid into a state
28 unemployment fund. Gratuities customarily received by an individual in the course of his or her
29 employment from persons other than his or her employing unit shall be treated as wages paid by
30 his or her employing unit. The reasonable cash value of remuneration paid in any medium other
31 than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance
32 with rules prescribed by the director; except that for the purpose of this subdivision and of §§ 28-
33 43-1 -- 28-43-14, this term does not include:

34 (i) That part of remuneration that is paid by an employer to an individual with respect to

1 employment during any calendar year, after remuneration equal to the amount of the taxable wage
2 base as determined in accordance with § 28-43-7 has been paid during that calendar year by the
3 employer or his or her predecessor to that individual; provided, that if the definition of "Wages" as
4 contained in the Federal Unemployment Tax Act is amended to include remuneration in excess of
5 the taxable wage base for that employment, then, for the purposes of §§ 28-43-1 -- 28-43-14,
6 "Wages" includes the remuneration as previously set forth, up to an amount equal to the dollar
7 limitation specified in the federal act. For the purposes of this subdivision, "Employment" includes
8 services constituting employment under any employment security law of another state or of the
9 federal government;

10 (ii) The amount of any payment made to, or on behalf of, an employee under a plan or
11 system established by an employer that makes provision for his or her employees generally, or for
12 a class or classes of his or her employees (including any amount paid by an employer or an
13 employee for insurance or annuities, or into a fund, to provide for any such payment), on account
14 of:

15 (A) Retirement;

16 (B) Sickness or accident disability;

17 (C) Medical and hospitalization expenses in connection with sickness or accident
18 disability; or

19 (D) Death; provided, that the employee has not the:

20 (I) Option to receive, instead of provision for that death benefit, any part of that payment
21 or, if that death benefit is insured, any part of the premiums (or contributions to premiums) paid by
22 his or her employer; and

23 (II) Right, under the provisions of the plan or system or policy of insurance providing for
24 that death benefit, to assign that benefit, or to receive a cash consideration in lieu of that benefit
25 either upon his or her withdrawal from the plan or system providing for that benefit or upon
26 termination of the plan or system or policy of insurance, or of his or her employment with that
27 employer.

28 (E) The payment by an employer (without deduction from the remuneration of the
29 employee) of:

30 (I) The tax imposed upon an employee under 26 U.S.C. § 3101; or

31 (II) Any payment required from an employee under chapters 42 -- 44 of this title.

32 (iii) Any amount paid by an employee, or an amount paid by an employer, under a benefit
33 plan organized under Internal Revenue Code [26 U.S.C. § 125].

34 (30) "Week" means the seven-day (7) calendar week beginning on Sunday at 12:01 A.M.

1 and ending on Saturday at 12:00 A.M. midnight.

2 SECTION 5. 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 -- MINIMUM WAGES

1 This act would, for purposes of wages, workers' compensation, temporary disability and
2 unemployment insurance benefits, create a new definition for the term "employee", which deems a
3 worker to be an employee, as opposed to an independent contractor, unless three (3) specific
4 conditions are satisfied.

5 This act would take effect upon passage.

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