

2023 -- H 5781

LC002047

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- TEMPORARY DISABILITY
INSURANCE -- GENERAL PROVISIONS

Introduced By: Representatives Kazarian, Giraldo, Carson, Cotter, Donovan, Serpa,
Batista, O'Brien, Shanley, and Casimiro

Date Introduced: February 22, 2023

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-39-2 of the General Laws in Chapter 28-39 entitled "Temporary
2 Disability Insurance — General Provisions" is hereby amended to read as follows:

3 **28-39-2. Definitions.**

4 The following words and phrases, as used in chapters ~~39—41~~ [39 through 41](#) of this title,
5 have the following meanings unless the context clearly requires otherwise:

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

9 (2) "Base period" with respect to an individual's benefit year when the benefit year begins
10 on or after October 7, 1990, means the first four (4) of the most recently completed five (5) calendar
11 quarters immediately preceding the first day of an individual's benefit year; provided, that for any
12 individual's benefit year when the benefit year begins on or after October 4, 1992, and for any
13 individual deemed monetarily ineligible for benefits under the "base period" as defined in this
14 subdivision, the department shall make a re-determination of entitlement based upon an alternate
15 base period that consists of the last four (4) completed calendar quarters immediately preceding the
16 first day of the claimant's benefit year. Notwithstanding anything contained to the contrary in this
17 subdivision, the base period shall not include any calendar quarter previously used to establish a
18 valid claim for benefits; provided, however, that the "base period" with respect to members of the

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

13 (3) “Benefit” means the money payable, as provided in chapters ~~39—41~~ [39 through 41](#) of
14 this title, to an individual as compensation for his or her unemployment caused by sickness or
15 [reasons allowed under this title](#);

16 (4) “Benefit credits” means the total amount of money payable to an individual as benefits,
17 as provided in § 28-41-7.

18 (5) “Benefit rate” means the money payable to an individual as compensation, as provided
19 in chapters ~~39—41~~ [39 through 41](#) of this title, for his or her wage losses with respect to any week
20 during which his or her unemployment is caused by sickness or reasons allowed under this title;

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

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

33 (7) “Board” means the board of review as created under chapter 16.1 of title 42.

34 (8) “Calendar quarter” has the same definition as contained in chapter 42 of this title.

1 (9) "Credit week" means any week within an individual's base period in which that
2 individual earns wages amounting to at least twenty (20) times the minimum hourly wage as
3 defined in chapter 12 of this title, for performing services in employment for one or more employers
4 subject to chapters ~~39—41~~ 39 through 41 of this title.

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

6 (11) "Employee" means any person who is or has been employed by an employer subject
7 to chapters ~~39—41~~ 39 through 41 of this title and in employment subject to those chapters.

8 (12) "Employer" means any employing unit that is an employer under chapters 42 — 44
9 of this title.

10 (13) "Employing unit" has the same definition as contained in chapter 42 of this title and
11 includes any governmental entity that elects to become subject to the provisions of chapters ~~39—~~
12 ~~41~~ 39 through 41 of this title, in accordance with the provisions of §§ 28-39-3.1 and 28-39-3.2.

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

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

15 (16) "Fund" means the Rhode Island temporary disability insurance fund established by
16 this chapter.

17 (17) "Partial unemployment due to sickness." For weeks beginning on or after January 1,
18 2006, an individual shall be deemed partially unemployed due to sickness in any week of less than
19 full-time work if he or she fails to earn in wages for services for that week an amount equal to the
20 weekly benefit rate for total unemployment due to sickness to which he or she would be entitled if
21 totally unemployed due to sickness and eligible.

22 (i) For the purposes of this subdivision and subdivision (22) of this section, "Wages"
23 includes only that part of remuneration for any work, which is in excess of one-fifth ($\frac{1}{5}$) of the
24 weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar
25 (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one
26 week, and "services" includes only that part of any work for which remuneration in excess of one-
27 fifth ($\frac{1}{5}$) of the weekly benefit rate for total unemployment, rounded to the next lower multiple of
28 one dollar (\$1.00), to which the individual would be entitled if totally unemployed and eligible in
29 any one week is payable; provided, that nothing contained in this paragraph shall permit any
30 individual to whom remuneration is payable for any work performed in any week in an amount
31 equal to, or greater than, his or her weekly benefit rate to receive benefits under this subdivision
32 for that week.

33 (18) "Reserve fund" means the temporary disability insurance reserve fund established by
34 § 28-39-7.

1 (19) "Services" means all endeavors undertaken by an individual that are paid for by
2 another or with respect to which the individual performing the services expects to receive wages or
3 profits.

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

7 (21)(i) "Taxes" means the money payments required by chapters ~~39—41~~ [39 through 41](#)
8 of this title, to be made to the temporary disability insurance fund or to the temporary disability
9 insurance reserve fund.

10 (ii) Wherever and whenever in chapters ~~39—41~~ [39 through 41](#) of this title, the words
11 "contribution" and/or "contributions" appear, those words shall be construed to mean the "taxes,"
12 as defined in this subdivision, that are the money payments required by those chapters to be made
13 to the temporary disability insurance fund or to the temporary disability insurance reserve fund.

14 (22) "Wages" has the same definition as contained in chapter 42 of this title; provided, that
15 no individual shall be denied benefits under chapters ~~39—41~~ [39 through 41](#) of this title because
16 his or her employer continues to pay to that individual his or her regular wages, or parts of them,
17 while he or she is unemployed due to sickness and unable to perform his or her regular or customary
18 work or services. The amount of any payments, whether or not under a plan or system, made to or
19 on behalf of an employee by his or her employer after the expiration of six (6) calendar months
20 following the last calendar month in which the employee performed actual bona fide personal
21 services for his or her employer, shall not be deemed to be wages either for the purpose of paying
22 contributions thereon under chapter 40 of this title, or for the purpose of being used as a basis for
23 paying benefits under chapter 41 of this title.

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

25 SECTION 2. Section 28-40-1 of the General Laws in Chapter 28-40 entitled "Temporary
26 Disability Insurance — Contributions" is hereby amended to read as follows:

27 **28-40-1. Amount of employee contributions — Wages on which based.**

28 (a) The taxable wage base under this chapter for each calendar year shall be equal to the
29 greater of thirty-eight thousand dollars (\$38,000) or the annual earnings needed by an individual to
30 qualify for the maximum weekly benefit amount and the maximum duration under chapters ~~39—~~
31 ~~41~~ [39 through 41](#) of this title. That taxable wage base shall be computed as follows: Every
32 September 30, the maximum weekly benefit amount in effect as of that date shall be multiplied by
33 thirty (30) and the resultant product shall be divided by thirty-six hundredths (.36). If the result thus
34 obtained is not an even multiple of one hundred dollars (\$100), it shall be rounded upward to the

1 next higher even multiple of one hundred dollars (\$100). That taxable wage base shall be effective
2 for the calendar year beginning on the next January 1.

3 (b) Each employee shall contribute with respect to employment after the date upon which
4 the employer becomes subject to chapters ~~39—41~~ 39 through 41 of this title, an amount equal to
5 the fund cost rate times the wages paid by the employer to the employee up to the taxable wage
6 base as defined and computed in subsection (a) of this section. The employee contribution rate for
7 the following calendar year shall be determined by computing the fund cost rate on or before
8 November 15 of each year as follows:

9 (1) The total amount of disbursements made from the fund for the twelve-month (12)
10 period ending on the immediately preceding September 30 shall be divided by the total taxable
11 wages paid by employers during the twelve-month (12) period ending on the immediately
12 preceding June 30. The ratio thus obtained shall be multiplied by one hundred (100) and the
13 resultant product if not an exact multiple of one-tenth of one percent (0.1%) shall be rounded down
14 to the next lowest multiple of one-tenth of one percent (0.1%);

15 (2) If the fund balance as of the preceding September 30 is less than the total disbursements
16 from the fund for the six-month (6) period ending on that September 30, that difference shall be
17 added to the total disbursements for the twelve-month (12) period ending September 30 for the
18 purpose of computing the fund cost rate, and if the resulting fund cost rate is not an exact multiple
19 of one-tenth of one percent (0.1%) it shall be rounded to the nearest multiple of one-tenth of one
20 percent (0.1%).

21 SECTION 3. Section 28-41-5 of the General Laws in Chapter 28-41 entitled "Temporary
22 Disability Insurance — Benefits" is hereby amended to read as follows:

23 **28-41-5. Weekly benefit rate — Dependents' allowances.**

24 (a)(1) Benefit rate. The benefit rate payable under this chapter to any eligible individual
25 with respect to any week of his or her unemployment due to sickness, when that week occurs within
26 a benefit year, shall be, for benefit years beginning on or after October 7, 1990, four and sixty-two
27 hundredths percent (4.62%) of the wages paid to the individual in that calendar quarter of the base
28 period in which the individual's wages were highest; provided, however, that the benefit rate shall
29 not exceed eighty-five percent (85%) of the average weekly wage paid to individuals covered by
30 chapters ~~42—44~~ 42 through 44 of this title for the preceding calendar year ending December 31.
31 If the maximum weekly benefit rate is not an exact multiple of one dollar (\$1.00) then the rate shall
32 be raised to the next higher multiple of one dollar (\$1.00). Those weekly benefit rates shall be
33 effective throughout the benefit years beginning on or after July 1 of the year prior to July of the
34 succeeding calendar year.

1 (2) The benefit rate of any individual, if not an exact multiple of one dollar (\$1.00), shall
2 be raised to the next higher multiple of one dollar (\$1.00).

3 (b) Dependents' allowances. An individual to whom benefits for unemployment due to
4 sickness are payable under this chapter with respect to any week, shall, in addition to those benefits,
5 be paid with respect to each week a dependent's allowance of ~~ten dollars (\$10.00)~~ twenty dollars
6 (\$20.00) or seven percent (7%), of the individual's benefit rate, payable under subsection (a) of this
7 section, whichever is greater, for each of that individual's children, including adopted and
8 stepchildren or that individual's court-appointed wards who, at the beginning of the individual's
9 benefit year, is under eighteen (18) years of age and who is at that time in fact dependent on that
10 individual. A dependent's allowance shall also be paid to that individual for any child, including
11 an adopted child or a stepchild or that individual's court appointed ward, eighteen (18) years of age
12 or over, incapable of earning any wages because of mental or physical incapacity, and who is
13 dependent on that individual in fact at the beginning of the individual's benefit year, including
14 individuals who have been appointed the legal guardian of that child by the appropriate court.
15 However, in no instance shall the number of dependents for which an individual may receive
16 dependents' allowances exceed five (5) in total. The weekly total of dependents' allowances
17 payable to any individual, if not an exact multiple of one dollar (\$1.00), shall be rounded to the
18 next lower multiple of one dollar (\$1.00). The number of an individual's dependents, and the fact
19 of their dependency, shall be determined as of the beginning of that individual's benefit year;
20 provided, that only one individual shall be entitled to a dependent's allowance for the same
21 dependent with respect to any week. Each individual who claims a dependent's allowance shall
22 establish his or her claim to it to the satisfaction of the director under procedures established by the
23 director.

24 (c) Any individual's benefit rate and/or dependents' allowance in effect for a benefit year
25 shall continue in effect until the end of that benefit year.

26 (d) Partial unemployment due to sickness. For weeks beginning on or after January 1,
27 2006, an individual partially unemployed due to sickness and otherwise eligible in any week shall
28 be paid sufficient benefits with respect to that week, so that his or her wages, rounded to the next
29 higher multiple of one dollar (\$1.00), and his or her benefits combined will equal in amount the
30 weekly benefit rate to which he or she would be entitled if totally unemployed due to sickness in
31 that week; provided that an individual must have been totally unemployed due to sickness for at
32 least seven (7) consecutive days prior to claiming partial benefits under this provision; provided,
33 that this provision shall not apply if the individual is entitled to lag day benefits pursuant to § 28-
34 41-9; provided, further, that nothing contained herein shall permit any individual to whom

1 remuneration is payable for any work performed in any week in an amount equal to or greater than
2 his or her weekly benefit rate to receive benefits or waiting period credit for that week.

3 SECTION 4. Sections 28-41-34 and 28-41-35 of the General Laws in Chapter 28-41
4 entitled "Temporary Disability Insurance — Benefits" are hereby amended to read as follows:

5 **28-41-34. Temporary caregiver insurance.**

6 The purpose of this chapter is to establish, within the state temporary disability insurance
7 program, a temporary caregiver insurance program to provide wage replacement benefits in
8 accordance with the provisions of this chapter, to workers who take time off work to care for a
9 seriously ill child, spouse, domestic partner, [sibling](#), parent, parent-in-law, [care recipient](#),
10 grandparent, [grandchild](#), or to bond with a new child.

11 Definitions as used in this chapter:

12 (1) "Adopted child" means a child adopted by, or placed for adoption with, the employee.

13 (2) "Bonding or bond" means to develop a psychological and emotional attachment
14 between a child and his or her parent(s) or persons who stand in loco parentis. This shall involve
15 being in one another's physical presence.

16 [\(3\) "Care recipient" means a person for whom the employee is responsible for providing](#)
17 [or arranging health or safety related care, including, but not limited to, helping the person obtain](#)
18 [diagnostic, preventive, routine, or therapeutic health treatment.](#)

19 ~~(3)~~[\(4\)](#) "Child" means a biological, adopted, or foster son or daughter, a stepson or
20 stepdaughter, a legal ward, a son or daughter of a domestic partner, or a son or daughter of an
21 employee who stands in loco parentis to that child.

22 ~~(4)~~[\(5\)](#) "Department" means the department of labor and training.

23 ~~(5)~~[\(6\)](#) "Domestic partner" means a party to a civil union as defined by chapter 3.1 of title
24 15.

25 ~~(6)~~[\(7\)](#) "Employee" means any person who is or has been employed by an employer subject
26 to chapters ~~39—41~~ [39 through 41](#) of this title and in employment subject to those chapters.

27 [\(8\) "Grandchild" means the child of the employee's child.](#)

28 ~~(7)~~[\(9\)](#) "Grandparent" means a parent of the employee's parent.

29 ~~(8)~~[\(10\)](#) "Newborn child" means a child under one year of age.

30 ~~(9)~~[\(11\)](#) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal
31 guardian, or other person who stands in loco parentis to the employee or the employee's spouse or
32 domestic partner when he/she was a child.

33 ~~(10)~~[\(12\)](#) "Parent-in-law" means the parent of the employee's spouse or domestic partner.

34 ~~(11)~~[\(13\)](#) "Persons who stand in loco parentis" means those with day-to-day responsibilities

1 to care for and financially support a child or, in the case of an employee, who had such
2 responsibility for the employee when the employee was a child. A biological or legal relationship
3 shall not be required.

4 (14) "Sibling" means children with a common parent or grandparent, including biological
5 siblings, half-siblings, step-siblings, foster siblings, and adopted siblings.

6 ~~(12)~~(15) "Serious health condition" means any illness, injury, impairment, or physical or
7 mental condition that involves inpatient care in a hospital, hospice, residential healthcare facility,
8 or continued treatment or continuing supervision by a licensed healthcare provider.

9 ~~(13)~~(16) "Spouse" means a party in a common law marriage, a party in a marriage
10 conducted and recognized by another state or country, or in a marriage as defined by chapter 3 of
11 title 15.

12 **28-41-35. Benefits.**

13 (a) Subject to the conditions set forth in this chapter, an employee shall be eligible for
14 temporary caregiver benefits for any week in which he or she is unable to perform his or her regular
15 and customary work because he or she is:

16 (1) Bonding with a newborn child or a child newly placed for adoption or foster care with
17 the employee or domestic partner in accordance with the provisions of § 28-41-36(c); or

18 (2) Caring for a child, grandchild, parent, parent-in-law, care recipient, grandparent,
19 sibling, spouse, or domestic partner, who has a serious health condition, subject to a waiting period
20 in accordance with the provisions of § 28-41-12 [repealed]. Employees may use accrued sick time
21 during the eligibility waiting period in accordance with the policy of the individual's employer.

22 (b) Temporary caregiver benefits shall be available only to the employee exercising his or
23 her right to leave while covered by the temporary caregiver insurance program. An employee shall
24 file a written intent with his or her employer, in accordance with rules and regulations promulgated
25 by the department, with a minimum of thirty (30) days' notice prior to commencement of the family
26 leave. Failure by the employee to provide the written intent may result in delay or reduction in the
27 claimant's benefits, except in the event the time of the leave is unforeseeable or the time of the
28 leave changes for unforeseeable circumstances.

29 (c) Employees cannot file for both temporary caregiver benefits and temporary disability
30 benefits for the same purpose, concurrently, in accordance with all provisions of this act and
31 chapters ~~39—41~~ 39 through 41 of this title.

32 (d) Temporary caregiver benefits may be available to any individual exercising his or her
33 right to leave while covered by the temporary caregiver insurance program, commencing on or
34 after January 1, 2014, which shall not exceed the individual's maximum benefits in accordance

1 with chapters 39 — 41 of this title. The benefits for the temporary caregiver program shall be
2 payable with respect to the first day of leave taken after the waiting period and each subsequent
3 day of leave during that period of family temporary disability leave. Benefits shall be in accordance
4 with the following:

5 (1) Beginning January 1, 2014, temporary caregiver benefits shall be limited to a maximum
6 of four (4) weeks in a benefit year;

7 (2) Beginning January 1, 2022, temporary caregiver benefits shall be limited to a maximum
8 of five (5) weeks in a benefit year;

9 (3) Beginning January 1, 2023, temporary caregiver benefits shall be limited to a maximum
10 of six (6) weeks in a benefit year; ~~and~~

11 (4) Beginning January 1, 2024, temporary caregiver benefits shall be limited to a maximum
12 of twelve (12) weeks in a benefit year.

13 (e) In addition, no individual shall be paid temporary caregiver benefits and temporary
14 disability benefits that together exceed thirty (30) times his or her weekly benefit rate in any benefit
15 year.

16 (f) Any employee who exercises his or her right to leave covered by temporary caregiver
17 insurance under this chapter shall, upon the expiration of that leave, be entitled to be restored by
18 the employer to the position held by the employee when the leave commenced, or to a position with
19 equivalent seniority, status, employment benefits, pay, and other terms and conditions of
20 employment including fringe benefits and service credits that the employee had been entitled to at
21 the commencement of leave.

22 (g) During any caregiver leave taken pursuant to this chapter, the employer shall maintain
23 any existing health benefits of the employee in force for the duration of the leave as if the employee
24 had continued in employment continuously from the date he or she commenced the leave until the
25 date the caregiver benefits terminate; provided, however, that the employee shall continue to pay
26 any employee shares of the cost of health benefits as required prior to the commencement of the
27 caregiver benefits.

28 (h) No individual shall be entitled to waiting period credit or temporary caregiver benefits
29 under this section for any week beginning prior to January 1, 2014. An employer may require an
30 employee who is entitled to leave under the federal Family and Medical Leave Act, Pub. L. No.
31 103-3 and/or the Rhode Island parental and family medical leave act, § 28-48-1 et seq., who
32 exercises his or her right to benefits under the temporary caregiver insurance program under this
33 chapter, to take any temporary caregiver benefits received, concurrently, with any leave taken
34 pursuant to the federal Family and Medical Leave Act and/or the Rhode Island parental and family

1 medical leave act.

2 (i) Temporary caregiver benefits shall be in accordance with the federal Family and
3 Medical Leave Act (FMLA), Pub. L. No. 103-3 and the Rhode Island parental and family medical
4 leave act in accordance with § 28-48-1 et seq. An employer may require an employee who is entitled
5 to leave under the federal Family and Medical Leave Act, Pub. L. No. 103-3 and/or the Rhode
6 Island parental and family medical leave act, § 28-48-1 et seq., who exercises his or her right to
7 benefits under the temporary caregiver insurance program under this chapter, to take any temporary
8 caregiver benefits received, concurrently, with any leave taken pursuant to the federal Family and
9 Medical Leave Act and/or the Rhode Island parental and family medical leave act.

10 SECTION 5. This act shall take effect on January 1, 2024.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- TEMPORARY DISABILITY
INSURANCE -- GENERAL PROVISIONS

1 This act would include sibling, grandchild, and care recipient in the coverage for temporary
2 caregiver benefits and increase the maximum temporary caregiver weeks from six (6) to twelve
3 (12) weeks. This act would also increase a dependent's allowances from ten dollars (\$10.00) weekly
4 to twenty dollars (\$20.00) or seven percent (7%) of the individual's benefit rate whichever is
5 greater.

6 This act would take effect on January 1, 2024.

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