

2023 -- S 0716 AS AMENDED

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY --
GENERAL PROVISIONS

Introduced By: Senators Goodwin, DiPalma, and Ciccone

Date Introduced: March 22, 2023

Referred To: Senate Finance

(Dept. of Labor and Training)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-42-3 of the General Laws in Chapter 28-42 entitled "Employment
2 Security — General Provisions" is hereby amended to read as follows:

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

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

6 (1) "Administration account" means the employment security administration account
7 established by this chapter.

8 (2) "Average weekly wage" means the amount determined by dividing the individual's
9 total wages earned for service performed in employment within the individual's base period by the
10 number of that individual's credit weeks within the individual's base period.

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

1 benefits; provided, that notwithstanding any provision of chapters 42 — 44 of this title to the
2 contrary, for the benefit years beginning on or after October 4, 1992, whenever an individual who
3 has received workers' compensation benefits is entitled to reinstatement under § 28-33-47, but the
4 position to which reinstatement is sought does not exist or is not available, the individual's base
5 period shall be determined as if the individual filed for benefits on the date of the injury.

6 (4) "Benefit" means the money payable to an individual as compensation for the
7 individual's wage losses due to unemployment as provided in these chapters.

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

10 (6) "Benefit rate" means the money payable to an individual as compensation, as provided
11 in chapters 42 — 44 of this title, for the individual's wage losses with respect to any week of total
12 unemployment.

13 (7) "Benefit year," with respect to any individual who does not already have a benefit year
14 in effect and who files a valid claim for benefits, means fifty-two (52) consecutive calendar weeks,
15 the first of which shall be the week containing the day as of which he or she first files a valid claim
16 in accordance with regulations adopted as hereinafter prescribed; provided, that the benefit year
17 shall be fifty-three (53) weeks if the filing of a new, valid claim would result in overlapping any
18 quarter of the base period of a prior new claim previously filed by the individual. In no event shall
19 a new benefit year begin prior to the Sunday next following the end of the old benefit year.

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

23 (9) "Contributions" means the money payments to the state employment security fund
24 required by those chapters.

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

27 (11) "Credit week," prior to July 1, 2012, means any week within an individual's base
28 period in which that individual earned wages amounting to at least twenty (20) times the minimum
29 hourly wage as defined in chapter 12 of this title for performing services in employment for one or
30 more employers subject to chapters 42 — 44 of this title, and for the period July 1, 2012, through
31 July 5, 2014, means any week within an individual's base period in which that individual earned
32 wages amounting to at least the individual's weekly benefit rate for performing services in
33 employment for one or more employers subject to chapters 42 — 44 of this title.

34 (12) "Crew leader," for the purpose of subdivision (19) of this section, means an individual

1 who:

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

3 (ii) Pays (either on the crew leader's own behalf or on behalf of that other person) the
4 individuals so furnished by the crew leader for the service in agricultural labor performed by them;
5 and

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

9 (13) "Director" means the head of the department of labor and training or the director's
10 authorized representative.

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

15 (15) "Employee" means any person who is, or has been, employed by an employer subject
16 to those chapters and in employment subject to those chapters.

17 (16) "Employer" means:

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

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

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

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

31 (17) "Employing unit" means any person, partnership, association, trust, estate, or
32 corporation, whether domestic or foreign, or its legal representative, trustee in bankruptcy, receiver,
33 or trustee, or the legal representative of a deceased person, that has, or had, in the unit's employ,
34 one or more individuals. For the purposes of subdivision (14) of this section, a private home shall

1 be considered an employing unit only if the person for whom the domestic service was performed
2 paid cash remuneration of one thousand dollars (\$1,000) or more in any calendar quarter in the
3 current calendar year, or the preceding calendar year, to individuals employed in that domestic
4 service in that private home.

5 (18)(i) “Employment,” subject to §§ 28-42-4 — 28-42-10, means service, including service
6 in interstate commerce, performed for wages, or under any contract of hire, written or oral, express
7 or implied; provided, that service performed shall also be deemed to constitute employment for all
8 the purposes of chapters 42 — 44 of this title if performed by an individual in the employ of a
9 nonprofit organization as described in subdivision (25) of this section, except as provided in § 28-
10 42-8(7);

11 (ii) Notwithstanding any other provisions of this section, “Employment” also means
12 service with respect to which a tax is required to be paid under any federal law imposing a tax
13 against which credit may be taken for contributions required to be paid into this state’s employment
14 security fund or which, as a condition for full tax credit against the tax imposed by the Federal
15 Unemployment Tax Act, is required to be covered under chapters 42 — 44 of this title;

16 (iii) Employment not to include owners. Employment does not include services performed
17 by sole proprietors (owners), partners in a partnership, limited liability company — single member
18 filing as a sole proprietor with the IRS, or members of a limited liability company filing as a
19 partnership with the IRS.

20 (19) “Employment — Crew leader.” For the purposes of subdivision (12) of this section:

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

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

27 (B) That individual is not an employee of the other person within the meaning of
28 subdivision (15) of this section; and

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

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

33 (B) That other person shall be treated as having paid cash remuneration to that individual
34 in an amount equal to the amount of cash remuneration paid to that individual by the crew leader

1 (either on the crew leader's own behalf or on behalf of that other person) for the service in
2 agricultural labor performed for that other person.

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

6 (21) "Fund" means the employment security fund established by this chapter.

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

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

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

12 (iii) Any instrumentality of any of these entities and one or more other states or political
13 subdivisions.

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

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

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

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

21 (C) Provides:

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

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

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

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

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

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

32 (26)(i) "Partial unemployment." An employee shall be deemed partially unemployed in
33 any week of less than full-time work if the employee fails to earn in wages for that week an amount
34 equal to the weekly benefit rate for total unemployment to which the employee would be entitled

1 if totally unemployed and eligible. For weeks beginning on or after May 23, 2021, through June
2 30, ~~2023~~ 2025, an employee shall be deemed partially unemployed in any week of less than full-
3 time work if the employee fails to earn wages for that week in an amount equal to or greater than
4 one hundred and fifty percent (150%) of the weekly benefit rate for total unemployment to which
5 the employee would be entitled if totally unemployed and eligible.

6 (ii) For the purposes of this subdivision and subdivision (28) of this section, “wages”
7 includes only that part of remuneration for any work that is in excess of one-fifth ($\frac{1}{5}$) of the weekly
8 benefit rate for total unemployment, rounded to the next lower multiple of one dollar (\$1.00), to
9 which the individual would be entitled if totally unemployed and eligible in any one week, and
10 “services” includes only that part of any work for which remuneration in excess of one-fifth ($\frac{1}{5}$)
11 of the weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar
12 (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one
13 week is payable; provided, that nothing contained in this paragraph shall permit any individual to
14 whom remuneration is payable for any work performed in any week in an amount equal to or greater
15 than his or her weekly benefit rate to receive benefits under this subdivision for that week.

16 (iii) Notwithstanding the foregoing, for weeks ending on or after May 23, 2021, through
17 June 30, ~~2023~~ 2025, “wages” includes only that part of remuneration for any work that is in excess
18 of fifty percent (50%) of the weekly benefit rate for total unemployment, rounded to the next lower
19 multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed and
20 eligible in any one week, and “services” includes only that part of any work for which remuneration
21 in excess of fifty percent (50%) of the weekly benefit rate for total unemployment, rounded to the
22 next lower multiple of one dollar (\$1.00), to which the individual would be entitled if totally
23 unemployed and eligible in any one week is payable. Provided, that, during the period defined in
24 this subdivision, nothing contained in this subdivision shall permit any individual to whom
25 remuneration is payable for any work performed in any week in an amount equal to or greater than
26 one hundred fifty percent (150%) of their weekly benefit rate to receive benefits under this
27 subdivision for that week.

28 (iv) Notwithstanding anything contained to the contrary in this subdivision, “services,” as
29 used in this subdivision and in subdivision (28) of this section, does not include services rendered
30 by an individual under the exclusive supervision of any agency of this state, or any of its political
31 subdivisions, by which the services are required solely for the purpose of affording relief, support,
32 or assistance to needy individuals performing those services, or services performed by members of
33 the national guard and organized reserves in carrying out their duties in weekly drills as members
34 of those organizations. “Wages,” as used in this subdivision and in subdivision (28) of this section,

1 does not include either remuneration received by needy individuals for rendering the
2 aforementioned services when that remuneration is paid exclusively from funds made available for
3 that purpose out of taxes collected by this state or any of its political subdivisions, or remuneration
4 received from the federal government by members of the national guard and organized reserves, as
5 drill pay, including longevity pay and allowances.

6 (27) "Payroll" means the total amount of all wages paid by the employer to the employer's
7 employees for employment.

8 (28) "Total unemployment." An individual shall be deemed totally unemployed in any
9 week in which the individual performs no services (as used in subdivision (26) of this section) and
10 for which the individual earns no wages (as used in subdivision (26) of this section), and in which
11 the individual cannot reasonably return to any self-employment in which the individual has
12 customarily been engaged.

13 (29) "Wages" means all remuneration paid for personal services on or after January 1,
14 1940, including commissions and bonuses and the cash value of all remuneration paid in any
15 medium other than cash, and all other remuneration that is subject to a tax under a federal law
16 imposing a tax against which credit may be taken for contributions required to be paid into a state
17 unemployment fund. Gratuities customarily received by an individual in the course of the
18 individual's employment from persons other than the individual's employing unit shall be treated
19 as wages paid by the individual's employing unit. The reasonable cash value of remuneration paid
20 in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and
21 determined in accordance with rules prescribed by the director; except that for the purpose of this
22 subdivision and of §§ 28-43-1 — 28-43-8.1, 28-43-8.2 [repealed], 28-43-8.3, 28-43-8.4 [repealed],
23 28-43-8.5 — 28-43-8.10, 28-43-11 [repealed], and 28-43-12 — 28-43-14, this term does not
24 include:

25 (i) That part of remuneration that is paid by an employer to an individual with respect to
26 employment during any calendar year, after remuneration equal to the amount of the taxable wage
27 base as determined in accordance with § 28-43-7 has been paid during that calendar year by the
28 employer or the employer's predecessor to that individual; provided, that if the definition of
29 "wages" as contained in the Federal Unemployment Tax Act is amended to include remuneration
30 in excess of the taxable wage base for that employment, then, for the purposes of §§ 28-43-1 —
31 28-43-14, "wages" includes the remuneration as previously set forth, up to an amount equal to the
32 dollar limitation specified in the federal act. For the purposes of this subdivision, "employment"
33 includes services constituting employment under any employment security law of another state or
34 of the federal government;

1 (ii) The amount of any payment made to, or on behalf of, an employee under a plan or
2 system established by an employer that makes provision for employees generally, or for a class or
3 classes of employees (including any amount paid by an employer or an employee for insurance or
4 annuities, or into a fund, to provide for any such payment), on account of:

5 (A) Retirement;

6 (B) Sickness or accident disability;

7 (C) Medical and hospitalization expenses in connection with sickness or accident
8 disability; or

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

10 (I) Option to receive, instead of provision for that death benefit, any part of that payment
11 or, if that death benefit is insured, any part of the premiums (or contributions to premiums) paid by
12 the individual's employer; and

13 (II) Right, under the provisions of the plan or system or policy of insurance providing for
14 that death benefit, to assign that benefit, or to receive a cash consideration in lieu of that benefit
15 either upon the employee's withdrawal from the plan or system providing for that benefit or upon
16 termination of the plan or system or policy of insurance, or of the individual's employment with
17 that employer;

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

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

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

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

24 (30) "Week" means the seven-day (7) calendar week beginning on Sunday at 12:01 a.m.
25 and ending on Saturday at 12:00 a.m. midnight.

26 SECTION 2. Section 28-44-7 of the General Laws in Chapter 28-44 entitled "Employment
27 Security — Benefits" is hereby amended to read as follows:

28 **28-44-7. Partial unemployment benefits.**

29 For weeks beginning on or after July 1, 1983, an individual partially unemployed and
30 eligible in any week shall be paid sufficient benefits with respect to that week, so that the
31 individual's week's wages, rounded to the next higher multiple of one dollar (\$1.00), as defined in
32 § 28-42-3(26), and the individual's benefits combined will equal in amount the weekly benefit rate
33 to which the individual would be entitled if totally unemployed in that week. For weeks beginning
34 on or after May 23, 2021, through June 30, ~~2023~~ 2025, an individual partially unemployed and

1 eligible in any week shall be paid benefits in an amount equal to the weekly benefit rate to which
2 the individual would be entitled if totally unemployed in that week less any wages earned in that
3 week, as defined in § 28-42-3(26), and the individual's benefits combined may not exceed in
4 amount one hundred and fifty percent (150%) of the individual's weekly benefit rate.

5 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY --
GENERAL PROVISIONS

1 This act would eliminate the "until June 30, 2023" sunset on the increase in the total amount
2 of earnings a partial-unemployment insurance claimant can receive before entirely disqualified for
3 unemployment insurance benefits and the increase in the amount of earnings disregarded when
4 calculating a weekly benefit rate.

5 This act would take effect upon passage.

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