

JANUARY SESSION, A.D. 2002

CREATING THE UNIFORM EMPLOYMENT TERMINATION ACT

Referred To: House Labor

(4) "Fringe benefit" means vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, pension benefit plan, or other benefit of economic value, to

1 the extent the leave, plan, or benefit is paid for by the employer.

2 (5) "Good cause" means (i) a reasonable basis related to an individual employee for
3 termination of the employee's employment in view of relevant factors and circumstances, which
4 may include the employee's duties, responsibilities, conduct on the job or otherwise, job
5 performance, and employment record, or (ii) the exercise of business judgment in good faith by
6 the employer, including setting its economic or institutional goals and determining methods to
7 achieve those goals, organizing or reorganizing operations, discontinuing, consolidating, or
8 divesting operations or positions or parts of operations or positions, determining the size of its
9 work force and the nature of the positions filled by its work force, and determining and changing
10 standards of performance for positions.

11 (6) "Good faith" means honesty in fact.

12 (7) "Pay," as a noun, means hourly wages or periodic salary, including tips, regularly
13 paid and nondiscretionary commissions and bonuses, and regularly paid overtime, but not fringe
14 benefits.

15 (8) "Person" means an individual, corporation, business trust, estate, trust, partnership,
16 association, joint venture, or any other legal or commercial entity excluding government or a
17 governmental subdivision, agency, or instrumentality.

18 (9) "Termination" means:

19 (i) a dismissal, including that resulting from the elimination of a position, of an employee
20 by an employer;

21 (ii) a layoff or suspension of an employee by an employer for more than two (2)
22 consecutive months; or

23 (iii) a quitting of employment or a retirement by an employee induced by an act or
24 omission of the employer, after notice to the employer of the act or omission without appropriate
25 relief by the employer, so intolerable that under the circumstances a reasonable individual would
26 quit or retire.

27 **28-5.2-3. Scope and application of chapter. --** (a) This chapter shall apply only to a
28 termination that occurs after the effective date of this chapter.

29 (b) Nothing in this chapter shall be construed to apply to a termination at the expiration of
30 an express oral or written agreement of employment for a specified duration, which was valid,
31 subsisting, and in effect on the effective date of this chapter.

32 (c) Except as provided in subsection (e) of this section, this chapter displaces and
33 extinguishes all common-law rights and claims of a terminated employee against the employer,
34 its officers, directors, and employees, which are based on the termination or on acts taken or

1 statements made that are reasonably necessary to initiate or effect the termination if the
2 employee's termination requires good cause under subsection 28-5.2-4(a), is subject to an
3 agreement for severance pay under subsection 28-5.2-5(c), or is permitted by the expiration of an
4 agreement for a specified duration under subsection 28-5.2-5(d).

5 (d) An employee whose termination is not subject to subsection 28-5.2-4(a) or subsection
6 28-5.2-5(d) and who is not a party to an agreement under subsection 28-5.2-5(c) retains all
7 common-law rights and claims.

8 (e) Nothing in this chapter shall be construed to displace or extinguish rights or claims of
9 a terminated employee against an employer arising under state or federal laws or administrative
10 rules or regulations having the force of law, or local ordinances valid under state law, a
11 collective-bargaining agreement between an employer and a labor organization, or an express oral
12 or written agreement relating to employment which does not violate this chapter. Those rights and
13 claims may not be asserted under this chapter, except as otherwise provided herein. The existence
14 or adjudication of those rights or claims shall not limit the employee's rights or claims under this
15 chapter, except as stated in subsection 28-5.2-8(d).

16 **28-5.2-4. Prohibited terminations. --** (a) Unless otherwise provided in an agreement for
17 severance pay under subsection 28-5.2-5(c), or for a specified duration under subsection 28-5.2-
18 5(d), an employer may not terminate the employment of an employee without good cause.

19 (b) Subsection (a) of this section shall apply only to an employee who has been employed
20 by the same employer for a total period of one (1) year or more and has worked for the employer
21 for at least five hundred twenty (520) hours during the twenty-six (26) weeks next preceding the
22 termination. A layoff or other break in service shall not be counted in determining whether an
23 employee's period of employment totals one (1) year, but the employee shall be considered to be
24 employed during paid vacations and other authorized leaves. If an employee is rehired after a
25 break in service exceeding one (1) year, not counting absences due to labor disputes or authorized
26 leaves, the employee shall be considered to be newly hired. The twenty-six (26) week period for
27 purposes of this subsection shall not include any week during which the employee was absent
28 because of layoffs of one (1) year or less, paid vacations, authorized leaves, or labor disputes.

29 **28-5.2-5. Agreements between employer and employee. --** (a) A right of an employee
30 under this chapter may not be waived by agreement except as provided in this section.

31 (b) By express written agreement, an employer and an employee may provide that the
32 employee's failure to meet specified business-related standards of performance or the employee's
33 commission or omission of specified business-related acts will constitute good cause for
34 termination in proceedings under this chapter. Those standards or prohibitions shall be effective

1 only if they have been consistently enforced and they have not been applied to a particular
2 employee in a disparate manner without justification. If the agreement authorizes changes by the
3 employer in the standards or prohibitions, the changes must be clearly communicated to the
4 employee.

5 (c) By express written agreement, an employer and an employee may mutually waive the
6 requirement of good cause for termination, if the employer agrees that upon the termination of the
7 employee for any reason other than willful misconduct of the employee, the employer will
8 provide severance pay in an amount equal to at least one (1) month's pay for each period of
9 employment totaling one (1) year, up to a maximum total payment equal to thirty (30) months'
10 pay at the employer's rate of pay in effect immediately before the termination. The employer shall
11 make the payment in a lump sum or in a series of monthly installments, none of which may be
12 less than one (1) month's pay plus interest on the principal balance. The lump sum payment must
13 be made or payment of the monthly installments must begin within thirty (30) days after the
14 employee's termination. An agreement under this subsection shall constitute a waiver by the
15 employer and the employee of the right to civil trial, including jury trial, concerning disputes over
16 the nature of the termination and the employee's entitlement to severance pay, and shall constitute
17 a stipulation by the parties that those disputes will be subject to the procedures and remedies
18 provided in this chapter.

19 (d) The requirement of good cause for termination shall not apply to the termination of an
20 employee at the expiration of an express oral or written agreement of employment for a specified
21 duration related to the completion of a specified task, project, undertaking, or assignment. If the
22 employment continues after the expiration of the agreement, section 28-5.2-4 shall apply to its
23 termination unless the parties enter into a new express oral or written agreement under this
24 subsection. The period of employment under an agreement described in this subsection shall
25 count toward the minimum periods of employment required by subsection 28-5.2-4(b).

26 (e) An employer may provide substantive and procedural rights in addition to those
27 provided by this chapter, either to one (1) or more specific employees by express oral or written
28 agreement, or to employees generally by a written personnel policy or statement, and may
29 provide that those rights are enforceable under the procedures of this chapter.

30 (f) An employing person and an employee not otherwise subject to this chapter may
31 become subject to its provisions to the extent provided by express written agreement, in which
32 case the employing person is deemed to be an employer.

33 (g) An agreement between an employer and an employee subject to this chapter shall
34 impose a duty of good faith in its formation, performance, and enforcement.

1 (h) By express written agreement, an employer and an employee may settle at any time a
2 claim arising under this chapter.

3 (i) By express written agreement before or after a dispute or claim arises under this
4 chapter, an employer and an employee may agree to private arbitration or other alternative
5 dispute-resolution procedure for resolving the dispute or claim.

6 (j) By express written agreement after a dispute or claim arises under this chapter, an
7 employer and an employee may agree to judicial resolution of the dispute or claim.

8 (k) The substantive provisions of this chapter shall apply to an agreement authorized by
9 subsections (i) and (j) of this section.

10 **28-5.2-6. Procedure and limitations. --** (a) An employee whose employment is
11 terminated may file a complaint and demand for arbitration under this chapter with the
12 department of labor ("the department") not later than one hundred eighty (180) days after the
13 effective date of the termination, the date of the breach of an agreement for severance pay under
14 subsection 28-5.2-5(c) or the date the employee learns or should have learned of the facts forming
15 the basis of the claim, whichever is latest. The time for filing shall be suspended while the
16 employee is pursuing the employer's internal remedies and has not been notified in writing by the
17 employer that the internal procedures have been concluded. Resort to an employer's internal
18 procedure is not a condition for filing a complaint under this chapter.

19 (b) Except when an employee quits, an employer, within ten (10) business days after a
20 termination, shall mail or deliver to the terminated employee a written statement of the reasons
21 for the termination and a copy of this chapter or a summary approved by the department.

22 (c) An employer may file a complaint and demand for arbitration under this chapter with
23 the department to determine whether there is good cause for the termination of a named
24 employee. At least fifteen (15) days before filing the employer shall mail or deliver to the
25 employee a written statement of the employer's intention to file and the factors alleged to
26 constitute good cause for a termination.

27 (d) The department shall promptly mail or deliver to the respondent a copy of the
28 complaint and demand for arbitration. Within twenty-one (21) days after receipt of a complaint,
29 the respondent must file an answer with the department and mail a copy of the answer to the
30 complainant. The answer of a respondent employer must include a copy of the statement of the
31 reasons for the termination furnished the employee.

32 (e) When a complaint is filed, a complainant employee or employer shall pay a filing fee
33 to the department in the amount of fifty dollars (\$50.00). The department may waive or defer
34 payment of the filing fee upon a showing of the complainant employee's indigency.

1 **28-5.2-7. Arbitration - Selection and powers of arbitrator - Hearings - Burden of**
2 **proof. --** (a) Except as otherwise provided in this chapter the provisions of chapter 3 of title 10
3 ("The Arbitration Act") shall apply to proceedings under this chapter. The department shall adopt
4 procedural rules to regulate arbitration under this chapter. The provisions of chapter 35 of title 42
5 applicable to the procedures of state agencies do not apply to arbitration under this chapter.
6 (b) The department shall adopt rules specifying the qualifications, method of selection,
7 and appointment of arbitrators.
8 (c) Subject to rules adopted by the department, all forms of civil discovery shall be
9 available in the discretion of the arbitrator, who shall ensure there is no undue delay, expense, or
10 inconvenience. Upon request, the employer shall provide the complainant or respondent
11 employee a complete copy of the employee's personnel file.
12 (d) A party may be represented in arbitration by an attorney or other person authorized
13 under the laws of this state to represent an individual in arbitration.
14 (e) A complainant employee has the burden of proving that a termination was without
15 good cause or that an employer breached an agreement for severance pay under subsection 28-
16 5.2-5(c). A complainant employer has the burden of proving that there is good cause for a
17 termination. In all arbitrations, the employer shall present its case first unless the employee
18 alleges that a quitting or retirement was a termination within the meaning of subsection 28-5.2-
19 2(9)(iii).
20 (f) If an employee establishes that a termination was motivated in part by impermissible
21 grounds, the employer, to avoid liability, must establish by a preponderance of the evidence that it
22 would have terminated the employment even in the absence of the impermissible grounds.
23 **28-5.2-8. Awards. --** (a) Within thirty (30) days after the close of an arbitration hearing
24 or at a later time by agreement of the parties, the arbitrator shall mail or deliver to the parties a
25 written award sustaining or dismissing the complaint, in whole or in part, and specifying
26 appropriate remedies, if any.
27 (b) An arbitrator may make one (1) or more of the following awards for a termination in
28 violation of this chapter:
29 (1) reinstatement to the position of employment the employee held when employment
30 was terminated or, if that is impractical, to a comparable position;
31 (2) full or partial backpay and reimbursement for lost fringe benefits, with interest,
32 reduced by interim earnings from employment elsewhere, benefits received, and amounts that
33 could have been received with reasonable diligence;
34 (3) if reinstatement is not awarded, a lump sum severance payment at the employee's rate

of pay in effect before the termination, for a period not exceeding thirty-six (36) months after the date of the award, together with the value of fringe benefits lost during that period, reduced by likely earnings and benefits from employment elsewhere, and taking into account such equitable considerations as the employee's length of service with the employer and the reasons for the termination; and

(4) reasonable attorneys' fees and costs.

(c) An arbitrator may make either or both of the following awards for a violation of an agreement for severance pay under subsection 28-52-5(c):

(1) enforcement of the severance pay and other applicable provisions of the agreement, with interest; and

(2) reasonable attorneys' fees and costs.

(d) An arbitrator may not make an award except as provided in subsections (b) and (c) of this section. The arbitrator may not award damages for pain and suffering, emotional distress, defamation, fraud, or other injury under the common law; punitive damages, compensatory damages or any other monetary award. In making a monetary award under this section, the arbitrator shall reduce the award by the amount of any monetary award to the employee in another forum for the same conduct of the employer. In making an award, the arbitrator's decision shall be based on the issues of law and fact.

(e) If an arbitrator dismisses an employee's complaint and finds it frivolous, or without foundation, the arbitrator may award reasonable attorneys' fees and costs to the prevailing employer.

(f) An arbitrator may sustain an employer's complaint and make an award declaring that there is good cause for the termination of a named employee. If the arbitrator dismisses the employer's complaint, the arbitrator may award reasonable attorneys' fees and costs to the prevailing employee.

28-5.2-9. Judicial review and enforcement. -- (a) Either party to an arbitration may seek vacation, modification, or enforcement of the arbitrator's award in the superior court for the county in which the termination occurred, or in which the employee resides.

(b) An application for vacation or modification must be filed within ninety (90) days after issuance of the arbitrator's award. An application for enforcement may be filed at any time after issuance of the arbitrator's award.

(c) The court may vacate or modify an arbitrator's award only if the court finds that:

(1) the award was procured by corruption, fraud, or other improper means;

(2) there was evident partiality by the arbitrator or misconduct prejudicing the rights of a

1 party;

2 (3) the arbitrator exceeded the powers of an arbitrator;

3 (4) the arbitrator committed a prejudicial error of law; or

4 (5) another ground exists for vacating the award under the provisions of chapter 35 of
5 title 42.

6 (d) In an application for vacation, modification, or enforcement of an arbitrator's award,
7 the court may award a prevailing employee reasonable attorneys' fees and costs. In an application
8 by an employee for vacation of an arbitrator's award, the court may award a prevailing employer
9 reasonable attorneys' fees and costs if the court finds the employee's application is frivolous,
10 unreasonable, or without foundation.

11 **28-5.2-10. Posting. --** An employer shall post a copy of this chapter or a summary
12 approved by the department in a prominent place in the work area. An employer who violates this
13 section shall be subject to a civil penalty not exceeding five hundred dollars (\$500). The attorney
14 general may bring a civil action, on behalf of this state, to impose and collect any civil penalty
15 arising under this section.

16 **28-5.2-11. Retaliation prohibited and civil action created. --** An employer or other
17 employing person may not directly or indirectly take adverse action in retaliation against an
18 individual for filing a complaint, giving testimony, or otherwise lawfully participating in
19 proceedings under this chapter whether or not the individual is an employee having rights under
20 this chapter. An employer or other employing person who violates this section shall be liable to
21 the individual subjected to the adverse action in retaliation for damage caused by the action,
22 punitive damages when appropriate, and reasonable attorneys' fees. A separate civil action may
23 be brought to enforce this liability. The employer shall also subject to applicable procedures and
24 remedies provided by sections 28-5.2-6 through 28-5.2-9, inclusive.

25 **28-5.2-12. Severability. --** If any provision of this chapter or the application thereof to
26 any person or circumstances is held invalid, such invalidity shall not affect other provisions or
27 applications of the chapter, which can be given effect without the invalid provision or application
28 and to this end the provisions of this chapter are declared to be severable.

29 SECTION 2. This act shall take effect upon passage and shall be prospective in its
30 application.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
CREATING THE UNIFORM EMPLOYMENT TERMINATION ACT

- 1 This act would create the Rhode Island "Uniform Employment Termination Act" which
2 would prohibit an employer from terminating an employee without good cause, and would
3 provide a procedure for arbitration by the department of labor of wrongful discharge claims.
4 This act would take effect upon passage and would be prospective in its application.

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