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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- TEMPORARY DISABILITY
INSURANCE

Introduced By: Senators Goldin, Paiva Weed, Miller, Nesselbush, and Metts

Date Introduced: February 06, 2013

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 28-41 of the General Laws entitled "Temporary Disability
2 Insurance - Benefits" are hereby amended by adding thereto the following sections:

3 **28-41-34. Temporary caregiver insurance.** – The purpose of this chapter is to establish,
4 within the state temporary disability insurance program, a temporary caregiver insurance program
5 to provide wage replacement benefits in accordance with the provisions of this chapter, to
6 workers who take time off work to care for a seriously ill child, spouse, domestic partner, parent,
7 parent-in-law, grandparent, or to bond with a new child.

8 Definitions as used in this chapter:

9 (1) "Child" means a biological, adopted, or foster son or daughter, a stepson or
10 stepdaughter, a legal ward, a son or daughter of a domestic partner, or a son or daughter of an
11 employee who stands in loco parentis to that child.

12 (2) "Newborn child" means a child under one year of age.

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

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

17 (5) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian,
18 or other person who stands in loco parentis to the employee or the employee's spouse or domestic

1 partner when he/she was a child.

2 (6) "Domestic partner" means a party to a civil union as defined by chapter 15-3.1.

3 (7) "Spouse" means a party in a common law marriage, a party in a marriage conducted
4 and recognized by another state or country, or in a marriage as defined by chapter 15-3.

5 (8) "Grandparent" means a parent of the employee's parent.

6 (9) "Parent-in-law" means the parent of the employee's spouse or domestic partner.

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

9 (11) "Serious health condition" means any illness, injury, impairment, or physical or
10 mental condition that involves inpatient care in a hospital, hospice, residential health care facility,
11 or continued treatment or continuing supervision by a licensed health care provider.

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

13 (13) "Persons who stand in loco parentis" means those with day-to-day responsibilities to
14 care for and financially support a child or, in the case of an employee, who had such
15 responsibility for the employee when the employee was a child. A biological or legal relationship
16 shall not be required.

17 **28-41-35. Benefits.** – (a) Subject to the conditions set forth in this chapter, an employee
18 shall be eligible for temporary caregiver benefits for any week in which he or she is unable to
19 perform his or her regular and customary work because he or she is:

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

23 (2) Caring for a child, a parent, parent-in-law, grandparent, spouse, or domestic partner,
24 who has a serious health condition, subject to a waiting period in accordance with the provisions
25 of section 28-41-12. Employees may use accrued sick time during eligibility waiting period in
26 accordance with the policy of the individual's employer.

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

34 (c) Employees cannot file for both temporary caregiver benefits and temporary disability

1 benefits for the same purpose, concurrently, in accordance with all provisions of this act and
2 chapter 39-41.

3 (d) Temporary caregiver benefits may be available to any individual exercising his or her
4 right to leave while covered by the temporary caregiver insurance program, commencing on or
5 after January 1, 2014, which shall not exceed the individual's maximum benefits in accordance
6 with chapters 39-41. The benefits for the temporary caregiver program shall be payable with
7 respect to the first day of leave taken after the waiting period and each subsequent day of leave
8 during that period of family temporary disability leave. Benefits shall be in accordance with the
9 following:

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

12 (2) Beginning January 1, 2015 temporary caregiver benefits shall be limited to a
13 maximum of six (6) weeks in a benefit year;

14 (3) Beginning January 1, 2016, and thereafter, benefits shall be limited to a maximum of
15 eight (8) weeks in a benefit year.

16 (e) In addition, no individual shall be paid temporary caregiver benefits and temporary
17 disability benefits which together exceed thirty (30) times his or her weekly benefit rate in any
18 benefit year.

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

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

31 (h) No individual shall be entitled to waiting period credit or temporary caregiver benefits
32 under this section for any week beginning prior to January 1, 2014.

33 (i) Temporary caregiver benefits shall be in accordance with federal Family and Medical
34 Leave Act (FMLA) P.L. 103-3 and Rhode Island Family Parental and Family Leave Act in

1 accordance with section 28-48-1, et. seq.

2 **28-41-36. Certification of eligibility for leave.** – (a) An individual who exercises his or
3 her right to leave covered by the temporary caregiver insurance program under this chapter shall
4 file a certificate form with all information required by the department.

5 (b) For leave for reason of caring for a seriously ill family member, an employee shall
6 file a certificate with the department that shall contain:

7 (1) A diagnosis and diagnostic code prescribed in the international classification of
8 diseases, or where no diagnosis has yet been obtained, a detailed statement of symptoms;

9 (2) The date if known, on which the condition commenced;

10 (3) The probable duration of the condition;

11 (4) An estimate of the amount of time that the licensed qualified health care provider
12 believes the employee is needed to care for the family member;

13 (5) A statement that the serious health condition warrants the participation of the
14 employee to provide care for his or her family member. "Warrants the participation of the
15 employee" includes, but is not limited to, providing psychological comfort, arranging third-party
16 care for the family member as well as directly providing, or participating in the medical and
17 physical care of the patient; and

18 (6) A certificate filed to establish medical eligibility of the serious health condition of the
19 employee's family member shall be made by the family member's treating licensed qualified
20 health care provider.

21 (7) In the case of a parent, or persons who are in loco parentis caring for the serious
22 health condition of a foster care child, the employee shall submit all required information in
23 accordance with this section, with a written request to the department of children, youth and
24 families for the release of medical information by the child's treating licensed qualified health
25 care provider. The department of children, youth and families shall transmit the requested
26 medical information, pending all properly submitted forms, to the department of labor and
27 training, within ten (10) business days of request. In the absence of the requested transmitted
28 medical information by the department of children, youth and families within ten (10) business
29 days, the employee may request the licensed qualified healthcare provider to directly transmit the
30 medical eligibility of the serious health condition to the department of labor and training.
31 Payment shall not be delayed, in accordance with all provisions of chapter 39-41, as a result of
32 delays by the department of children, youth and families in transmitting medical information.

33 (c) The department shall develop a certificate of eligibility form for leave in the case of
34 bonding as defined herein, for the birth of a newborn child of the employee or the employee's

1 domestic partner, or the placement of a child with the employee in connection with the adoption
2 or foster care of the child by the employee or domestic partner, or persons in loco parentis.
3 Information shall include the following:

4 (1) A birth certificate, certificate of adoption, or other competent evidence showing the
5 employee or the employee's domestic partner, or persons in loco parentis is the parent of the child
6 within twelve (12) months of the child's adoption, birth or placement for adoption or foster care
7 with the employee.

8 **28-41-37. Determination of a Claim.--** (a) In accordance with section 28-41-16, upon
9 the filing of a claim, the director shall promptly examine the claim and on the basis of facts found
10 by the director and records maintained by the department, the claim shall be determined to be
11 valid or invalid, if the claim is determined to be valid, the director shall promptly notify the
12 claimant as to the week with respect to which benefits shall commence, the weekly benefit
13 amount payable, and the maximum duration of those benefits. If the claim is determined to be
14 invalid, the director shall likewise notify the claimant and any other interested parties of that
15 determination and the reasons for it. if the processing of the claim is delayed for any reason, the
16 director shall notify the claimant, in writing, within three (3) weeks of the date the application for
17 benefits is filed of the reason for the delay. Unless the claimant or any other interested party,
18 within fifteen (15) days, requests a hearing before the board of review, the determination with
19 reference to the claim is final. However, for good cause shown the fifteen (15) day period may be
20 extended after notification by the director has been mailed to his or her last known address, as
21 provided in this section. At any time within one year from the date of a monetary determination,
22 the director, upon request of the claimant or on his or her own motion, may reconsider his or her
23 determination if he or she finds that an error in computation or identity has occurred in
24 connection with it or that additional wages pertinent to the claimant's status have become
25 available, or if that determination has been made as a result of a nondisclosure or
26 misrepresentation of a material fact.

27 (b) If an appeal is duly filed, benefits with respect to the period prior to the final decision,
28 if it is found that those benefits are payable, shall be paid only after the decision. If an appeal
29 tribunal affirms a decision of the director, or the board of review affirms a decision of an appeal
30 tribunal allowing benefits, those benefits shall be paid regardless of any appeal which may
31 subsequently be taken.

32 **28-41-38. Confidential Health Information.--** Information pursuant to any individual's
33 temporary disability claim or temporary caregiver insurance claim shall be held confidential in
34 accordance with chapters 39-41, section 28-39-19, 5-37.3, and all applicable state and federal

1 regulations.

2 **28-41-39. Powers and Duties.--** (a) The director of the department of labor and training
3 shall have the following powers and duties:

4 (1) To promulgate regulations relative to the operation of the temporary caregiver
5 insurance program;

6 (2) To create all necessary applications and certificates to fulfill the purposes of this
7 section;

8 (3) To disseminate information regarding the program to Rhode Island employers and
9 shall carry out a public education program to inform workers and employers about the availability
10 of benefits under the temporary caregiver insurance program. The director may use a proportion
11 of the funds collected for the temporary caregiver insurance program in a given year to pay for
12 the public education program and/or funding received from other sources for the purpose of
13 educating the public about their benefits. Outreach information shall be available in English and
14 other languages; and

15 (4) To inform Rhode Island employees of their disability insurance rights and benefits
16 due to the employee's own sickness, injury, or pregnancy, or the employee's need to provide care
17 for any sick or injured family member or new child. The notice shall be given by every eligible
18 employer to each new employee hired on or after January 1, 2014, and to each employee taking
19 leave from work on or after January 1, 2014 due to pregnancy or the need to provide care for any
20 sick or injured family member or new child. The director shall require each employer to post and
21 maintain information regarding the program in accordance with section 28-41-15.

22 **28-41-40. Fraud and Misrepresentation of Benefits. --** (a) The temporary caregiver
23 insurance program shall be part of the temporary disability insurance fund. If the director finds
24 that any individual falsely certifies the medical condition of any person in order to obtain family
25 temporary disability insurance benefits, with the intent to defraud, whether for the maker or for
26 any other person, the director shall assess a penalty against the individual in the amount of
27 twenty-five percent (25%) of the benefits paid as a result of the false certification. Unless
28 otherwise specified to the contrary, all of the provisions of chapters 39 through 41 of this title
29 shall apply to the temporary caregiver insurance program.

30 (b) If a physician or other qualified health care provider licensed by a foreign country is
31 under investigation by the department for assisting in the filing of false claims and the department
32 does not have the legal remedies to conduct a criminal investigation or prosecution in that
33 country, the department may suspend the processing of all further certifications until the licensed
34 qualified health care provider fully cooperates and continues to cooperate with the investigation.

1 A qualified health care provider licensed by and practicing in a foreign country who has been
2 convicted of filing false claims with the department shall be barred indefinitely from filing a
3 certificate in support of a temporary disability insurance or temporary caregiver insurance claim
4 in the state of Rhode island.

5 **28-41-41. Criminal Prosecution. --** All criminal actions for any violation of chapter 39 -
6 41 of this title, or any rule or regulation of the department shall be prosecuted by the attorney
7 general, or by any qualified member of the Rhode Island bar, that shall be designated by the
8 director and approved by the attorney general to institute and prosecute that action.

9 **28-41-42. Receipt of Federal Funds. --** To the extent that funds are made available by
10 the federal government, under title III of the Social Security Act, (42 U.S.C. 501 et seq.), or
11 otherwise for such purpose, the expenses of administering chapter 39-41 of this title shall be paid
12 from those funds, provided that this section shall not be considered to permit any expenditure of
13 funds from the employment security administration account contrary to section 28-42-29. In the
14 event that the Social Security Act is amended to permit funds granted under Title III to be used to
15 pay expenses of administering a sickness compensation law, such as chapter 39-41 of this title,
16 then from and after the effective date of that amendment, the expenses of administering those
17 chapters shall be paid out of the employment security administration account or any other account
18 or fund in which funds granted under Title III are deposited.

19 SECTION 2. 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 -- TEMPORARY DISABILITY
INSURANCE

1 This act would establish within the state temporary disability insurance program, a
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4 new child.

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