

2014 -- H 7260

=====
LC003719
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO WORKERS' COMPENSATION -- ELECTRONIC FILING

Introduced By: Representatives Mattiello, Shekarchi, Craven, Lally, and Marcello

Date Introduced: January 30, 2014

Referred To: House Judiciary

(Judiciary)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-29-26 of the General Laws in Chapter 28-29 entitled "Workers'
2 Compensation - General Provisions" is hereby amended to read as follows:

3 **28-29-26. Supervision of enforcement.** -- (a) Department of labor and training. - The
4 director as provided for in chapters 29 -- 38 of this title, and chapter 53 of this title and chapter
5 16.1 of title 42, shall have supervision over the enforcement of the provisions of those chapters,
6 and the director shall have the power and authority to adopt and enforce all reasonable rules,
7 regulations, and orders necessary and suitable to the administration of the department's
8 responsibilities as described in those chapters.

9 (b) (1) Workers' compensation court. - The workers' compensation court, as provided for
10 in chapters 29 -- 38 of this title, shall have supervision over the enforcement of the provisions of
11 the chapters, and shall have the power and authority to adopt and enforce all reasonable rules,
12 regulations, and orders necessary and suitable to the administration of its responsibilities
13 described in the chapters. In addition to the foregoing, the court shall have the power and
14 authority to hear and decide appeals from the retirement board in accordance with Rhode Island
15 general law section 45-21.2-9. The court shall remain judicially and administratively independent.
16 The Workers' compensation court shall have original jurisdiction over all civil actions filed
17 pursuant to sections 28-36-15 and 28-37-28 and pursuant to the provisions of chapter 53 of this
18 title.

19 (2) Any petition arising from any dispute regardless of date of injury, unless specifically

1 excepted, shall be filed with the ~~administrator of the workers' compensation~~ court in accordance
2 with chapter 35 of this title and ~~any rules and regulations~~ the rules of practice promulgated by the
3 workers' compensation court.

4 (3) The enactment of this subsection shall not affect the rights of the parties established
5 by any existing memorandum of agreement, suspension agreement and receipt, preliminary
6 determination of the department of workers' compensation, order or decree, or any existing right
7 to the payment of compensation acquired pursuant to section 28-29-6 or 28-35-9.

8 SECTION 2. Sections 28-30-7, 28-30-13, 28-30-15, 28-30-15.1, 28-30-15.2 and 28-30-
9 16.3 of the General Laws in Chapter 28-30 entitled "Workers' Compensation Court" are hereby
10 amended to read as follows:

11 **28-30-7. Clerical assistance to administrator.** -- The administrator, with the approval of
12 the chief judge of the workers' compensation court, may employ any clerical assistance that he or
13 she may require for copying, recording, indexing, and attending upon the files of the court. ~~.-The~~
14 ~~administrator, with the approval of the chief judge, shall~~ and may appoint ~~the following~~ additional
15 ~~support staff as necessary: two (2) court secretaries, three (3) hearings reporters, five (5) assistant~~
16 ~~administrator/clerks, two (2) clerk secretaries, and two (2) data entry clerks. The compensation~~
17 ~~for the additional staff created by this section shall be provided from the workers' compensation~~
18 ~~administrative fund established by section 28-37-1.~~

19 **28-30-13. Controversies submitted to court.** -- (a) Any controversy over which the
20 workers' compensation court has jurisdiction in accordance with chapters 29 -- 38 and chapter 53
21 of this title, including compensation, reasonableness of medical and hospital bills, degree of
22 functional impairment and/or disability, a dispute between an insurance carrier and an employer
23 under a workers' compensation insurance contract, except disputes under the jurisdiction of the
24 workers' compensation appeals board established pursuant to section 27-9-29, failure of an
25 employer to secure the payment of compensation under chapters 29 -- 38 and chapter 53 of this
26 title and any controversy in which the state or any of its political subdivisions is a party, and
27 appeals from an order of the retirement board pursuant to Rhode Island general law section 45-
28 21.2-9 shall be submitted to the court in the manner provided in chapters 33 and 35 of this title.

29 (b) Disputes between an insurance carrier and an employer under a workers'
30 compensation insurance contract shall not be subject to a pretrial conference in accordance with
31 section 28-35-20, but shall be assigned consistent with the rules ~~and regulations~~ of practice of the
32 workers' compensation court.

33 **28-30-15. Retirement of judges engaged on or before July 2, 1997, on reduced pay.** --
34 (a) Whenever any person engaged as a judge on or before July 2, 1997, has served as a workers'

1 compensation judge for twenty (20) years, or has so served for ten (10) years and has reached the
2 age of sixty-five (65) years, he or she may retire from active service and subsequently he or she
3 shall receive annually during life a sum equal to three-fourths (3/4) of the annual salary that he or
4 she was receiving at the time of retirement. In determining eligibility under this section, any
5 judge who has served as a general officer may include that service as if that service had been on
6 the workers' compensation court. Whenever a judge or magistrate shall be granted a leave of
7 absence without pay, such absence shall not be credited towards active service time for the
8 purposes of retirement.

9 (b) Any judge who retires in accordance with the provisions of this section may at his or
10 her own request and at the direction of the chief justice of the supreme court, subject to the
11 retiree's physical and mental competence, be assigned to perform any services that a judge on the
12 workers' compensation court as the chief judge prescribes. When so assigned and performing
13 those services, he or she shall have all the powers and authority of a judge. A retired judge shall
14 not be counted in the number of judges provided by law for the workers' compensation court.
15 Whenever a judge ~~or magistrate~~ shall be granted a leave of absence without pay, such absence
16 shall not be credited towards active service time for the purposes of retirement.

17 **28-30-15.1. Retirement of judges engaged after July 2, 1997.** -- (a) Whenever any
18 person first engaged as a judge:

19 (1) Subsequent to July 2, 1997 and prior to January 1, 2009, has served as a workers'
20 compensation judge for twenty (20) years, or has so served for ten (10) years and has reached the
21 age of sixty-five (65) years, he or she may retire from active service and subsequently he or she
22 shall receive annually during life a sum equal to three-fourths (3/4) of his or her average highest
23 three (3) consecutive years of compensation;

24 (2) On or after January 1, 2009 and prior to July 1, 2009, has served as a workers'
25 compensation judge for twenty (20) years or has so served for ten (10) years and reached the age
26 of sixty-five (65) years, he or she may retire from active service and subsequently he or she shall
27 receive annually during life a sum equal to seventy percent (70%) of his or her average highest
28 three (3) consecutive years or compensation.

29 (3) On or after July 1, 2009, has served as a workers' compensation judge for twenty (20)
30 years, or has served for ten (10) years, and reached the age of sixty-five (65) years, he or she may
31 retire from regular active service and thereafter said justice shall receive annually during his or
32 her life a sum equal to sixty-five (65%) percent of his or her average highest five (5) consecutive
33 years of compensation.

34 (b) In determining eligibility under this section, any judge who has served as a general

1 officer may include that service as if that service had been on the workers' compensation court.
2 Whenever a judge ~~or magistrate~~ shall be granted a leave of absence without pay, such absence
3 shall not be credited towards active service time for the purposes of retirement.

4 (c) Any judge who retires in accordance with the provisions of this section may at his or
5 her own request and at the direction of the chief justice of the supreme court subject to the
6 retiree's physical and mental competence, be assigned to perform those services that a judge on
7 the workers' compensation court as the chief judge prescribes. When so assigned and performing
8 those services, he or she shall have all the powers and authority of a judge. A retired judge shall
9 not be counted in the number of judges provided by law for the workers' compensation court.

10 **28-30-15.2. No incremental retirement benefit for temporary service as chief justice,**
11 **presiding justice or chief judge retired pursuant to section 28-30-15 or 28-30-15.1. --** No
12 increment in salary resulting from the ~~application of personnel rule 4.0217 or any other or~~
13 ~~successor rule or regulation providing for an increment in salary for~~ temporary service as chief
14 justice, presiding justice or chief judge shall be construed to add to the annual salary of a judicial
15 officer for purposes of retirement under section 28-30-15 or 28-30-15.1.

16 **28-30-16.3. No incremental retirement benefit for temporary service as chief justice,**
17 **presiding justice or chief judge retired pursuant to section 28-30-16 or 28-30-16.2. --** No
18 increment in salary resulting from the ~~application of personnel rule 4.0217 or any other or~~
19 ~~successor rule or regulation providing for an increment in salary for~~ temporary service as chief
20 justice, presiding justice or chief judge shall be construed to add to the annual salary of a judicial
21 officer for purposes of retirement under section 28-30-16 or 28-30-16.2.

22 SECTION 3. Sections 28-30-8 and 28-30-14 of the General Laws in Chapter 28-30
23 entitled "Workers' Compensation Court" are hereby repealed.

24 ~~**28-30-8. Declaration of vacancy in office. --** Whenever a workers' compensation judge
25 ~~or the administrator neglects, is unable to serve, or becomes disqualified to serve because of~~
26 ~~malfeasance in office or otherwise, the governor, with the advice and consent of the senate, may~~
27 ~~after a hearing declare vacant the office of the judge or administrator.~~~~

28 ~~**28-30-14. Clerk/secretary in unclassified service. --** The clerk/secretary of the workers'
29 ~~compensation court shall be in the unclassified status of state employment.~~~~

30 SECTION 4. Section 28-32-2 of the General Laws in Chapter 28-32 entitled "Workers'
31 Compensation-Report of Injuries" is hereby amended to read as follows:

32 **28-32-2. Penalty for failure to report. --** (a) Any employer who refuses or neglects to
33 make the reports required by the provisions of section 28-32-1 may be assessed a penalty of two
34 hundred fifty dollars (\$250) by the director for each refusal or neglect to make a report.

1 (b) The ~~district court for the county of Providence~~ workers' compensation court shall
2 have jurisdiction to enforce compliance with any order of the director made pursuant to this
3 section. The director, in his or her discretion, may bring a civil action to collect all penalties
4 assessed.

5 (c) All penalties collected pursuant to this section shall be deposited in the general fund.

6 SECTION 5. Sections 28-33-9, 28-33-34.1, 28-33-35, 28-33-37 and 28-33-43 of the
7 General Laws in Chapter 28-33 entitled "Workers' Compensation - Benefits" are hereby amended
8 to read as follows:

9 **28-33-9. Order declaring employer liable for medical services.** -- When an injury
10 results in no incapacity or incapacity of three (3) days or less and a dispute arises between the
11 employee and the employer or insurer as to the payment of medical expenses or other services
12 provided under sections 28-33-5, 28-33-7 and 28-33-8, the employee or the medical provider may
13 file a petition with the ~~administrator of the~~ workers' compensation court, which petition shall
14 follow the procedure as outlined in chapter 35 of this title. In no event shall a petition be filed
15 until twenty-one (21) days have elapsed since written demand for payment for the expense or
16 service has been made on the employer or insurer.

17 **28-33-34.1. Schedule of medical review.** -- (a) On or about twenty-six (26) weeks from
18 the date of a compensable injury, any person obtaining incapacity benefits may be examined and
19 their diagnosis and treatment reviewed by a comprehensive independent health care review team
20 or an impartial medical examiner. The comprehensive independent health care review team or
21 impartial medical examiner shall be selected through a mechanism to be established by the
22 administrator of the medical advisory board. The results of the examination and review shall be
23 provided to the employee and the insurer or self-insured employer within fourteen (14) days of
24 the examination and a copy shall be filed with the medical advisory board. The comprehensive
25 independent health care review team and/or impartial medical examiner shall review the treating
26 physician's findings and diagnosis and make its own findings of the extent and nature of the
27 claimed disability, the degree of functional impairment and/or disability, the expectation of
28 further medical improvement, any further medical care, treatment, and/or rehabilitation services
29 that may be required to reach maximum medical improvement, type(s) of work that can be
30 performed within existing physical capacity, the degree of disability expected at maximum
31 medical improvement, whether the employee can return to the former position of employment,
32 and compliance of the treating physician with protocols and standards of medical care established
33 by the medical advisory board. The report ~~shall~~ may be subsequently admissible as ~~the court's a~~
34 court exhibit. A party may be permitted to cross-examine the author(s) of the report with leave of

1 the court.

2 (b) On or about thirteen (13) weeks after any examination under this section or section
3 28-33-35, a comprehensive independent health care review team or impartial medical examiner
4 shall perform a similar review. The same comprehensive independent health care review team or
5 impartial medical examiner may not perform more than two (2) consecutive reviews on a
6 particular employee.

7 (c) Failure to appear for examination under this section shall be grounds for suspension
8 or termination of benefits unless justified by good cause. Residence outside the state does not, by
9 itself, constitute good cause for failure to appear.

10 **28-33-35. Appointment of impartial medical examiner.** -- (a) Any judge of the court
11 may, at any time after an injury, on his or her own motion or on the request or petition of the
12 employer or employee, appoint an impartial medical examiner or a comprehensive independent
13 health care review team to act as a medical examiner, and the reasonable fee of the medical
14 examiner for examinations under this section and/or section 28-33-34.1 shall be paid by the
15 employer.

16 (b) Impartial medical examiners and/or comprehensive independent health care review
17 teams shall provide guidance and make recommendations with respect to contested or disputed
18 findings of fact concerning health care. Impartial medical examiners and/or comprehensive
19 independent health care review teams may also make findings as to compliance of health care
20 providers with medical care standards and protocols established by the medical advisory board.
21 Unless previously approved by the board, treatment or diagnostic services that are not consistent
22 with the medical care standards and protocols shall not be charged to the employer or employee.
23 The report of the findings of the impartial medical examiner and/or comprehensive independent
24 health care review team ~~shall~~ may be admissible as an exhibit of the court. The findings of the
25 report shall become final and binding unless either party elects to contest the findings. Notice of
26 the contest must be filed within ten (10) days of receipt of the report required to be provided
27 pursuant to section 28-33-34.1(a). The contesting party shall pay the cost of the court appearance
28 of the author of the report. In the event that the employee is the prevailing party, the employee
29 shall be reimbursed for the entire amount paid by him or her for the court appearance of the
30 author of the report.

31 **28-33-37. Examination by impartial examiner -- Reports.** -- A medical examiner, once
32 being duly sworn by ~~the administrator or~~ a judge of the workers' compensation court appointing
33 him or her to the faithful performance of his or her duties at the inception of his or her
34 designation as an impartial medical examiner, shall at that time and as often as requested in

1 accordance with chapters 29 -- 38 of this title, examine injured employees to determine the nature
2 and probable duration of their injuries. This medical examiner shall file a signed report within
3 ninety-six (96) hours of the completion of each and every examination made of those employees
4 with the ~~office of the administrator of the~~ workers' compensation court, ~~in triplicate~~, and that
5 report shall indicate the name and the title of the official by whom he or she was sworn in and
6 appointed and shall then be acceptable as proper legal evidence in any hearing or proceedings
7 before the workers' compensation court to determine the amount of compensation due the
8 employee under the provisions of chapters 29 -- 38 of this title, and the examiner may be
9 summoned for the purpose of cross-examination in proceedings before the court. Copies of those
10 reports shall be furnished to all interested parties.

11 **28-33-43. Employer liability for property damage.** -- When an employee sustains
12 property damage to eyeglasses, dentures, or artificial prosthesis arising out of and in the course of
13 his or her employment, regardless of whether or not he or she suffered personal injury or loss of
14 time, he or she may file a petition with ~~the administrator of~~ the workers' compensation court, and
15 he or she shall be paid the reasonable value of the property or the reasonable expense of repairing
16 the property by an employer subject to or who has elected to become subject to the provisions of
17 chapters 29 -- 38 of this title. The petition shall be prosecuted in the same manner as other
18 petitions for compensation before the court. In hearings before the court, counsel and witness fees
19 shall be awarded for the successful prosecution of a petition under this section.

20 SECTION 6. Sections 28-35-6, 28-35-9, 28-35-12, 28-35-12.1, 28-35-14, 28-35-17, 28-
21 35-20, 28-35-24, 28-35-27, 28-35-28, 28-35-28.1, 28-35-31, 28-35-37, 28-35-45, 28-35-46, 28-
22 35-54, 28-35-55 and 28-35-61 of the General Laws in Chapter 28-35 entitled "Workers'
23 Compensation - Procedure" are hereby amended to read as follows:

24 **28-35-6. Notice of amendments to memorandum of agreement.** -- (a) If the workers'
25 compensation court makes any amendment or addition to the memorandum of agreement, ~~the~~
26 ~~administrator of~~ the workers' compensation court shall immediately notify the department of the
27 changes in the agreement.

28 (b) If an employer or insurer and an employee and his or her attorney, if represented,
29 reach an agreement, subsequent to the filing of a memorandum of agreement, order, or decree, as
30 to any issue, the parties shall file a written agreement and receipt with the department, signed by
31 the parties, and on a form prescribed by the department. A copy of any agreement and receipt
32 shall be delivered to each of the parties. Upon the filing of the agreement and receipt with the
33 department, it shall be as binding upon both parties as a preliminary determination order or
34 decree.

1 **28-35-9. Payment of weekly benefits -- Admission of entitlement to compensation --**

2 **Payment of compensation without agreement. --** ~~(a) For all injuries occurring from September~~
3 ~~1, 1982 through February 28, 1986, in the event that an employer or insurer makes direct payment~~
4 ~~of weekly benefits to an employee, the employee must file a copy of the initial medical treatment~~
5 ~~report that he or she has received as a result of the injury with the employer or insurer within ten~~
6 ~~(10) days of receipt by the employee or his or her attorney of the report, certified mail, return~~
7 ~~receipt requested. If the employer or insurer continues to make payment to the employee after ten~~
8 ~~(10) days following receipt of the report by the employer or insurer, the employer shall~~
9 ~~immediately after that ten (10) day period file a memorandum of agreement as set forth in section~~
10 ~~28-35-1 and that payment shall constitute a conclusive admission of liability as to the injuries set~~
11 ~~forth in the report and that the employee is entitled to compensation under chapters 29 -- 38 of~~
12 ~~this title. The employer may not file a petition to suspend or reduce payments until a~~
13 ~~memorandum has been filed.~~

14 ~~(b)~~ In the event that an employer or insurer makes payment of weekly benefits to an
15 employee without filing a memorandum of agreement or a non-prejudicial memorandum of
16 agreement with the department the payment shall constitute a conclusive admission of liability
17 and ongoing incapacity and that the employee is entitled to compensation under chapters 29 -- 38
18 of this title and the employer or insurer shall not be entitled to any credit for the payment if the
19 employee is awarded compensation in accordance with these chapters. The employer or insurer
20 shall not file a petition to suspend or reduce payments until a memorandum has been filed with
21 the department.

22 **28-35-12. Petition for determination of controversy -- Contents and filing. --** (a) In all

23 disputes between an employer and employee in regard to compensation or any other obligation
24 established under chapters 29 -- 38 of this title, and when death has resulted from the injury and
25 the dependents of the deceased employee entitled to compensation are, or its apportionment
26 among them is, in dispute, any person in interest or his or her duly authorized representative may
27 file with ~~the administrator of~~ the workers' compensation court a petition prescribed by the court,
28 setting forth the names and residences of the parties, the facts relating to employment at the time
29 of injury, the cause, extent, and character of the injury, the amount of wages, earnings, or salary
30 received at the time of the injury, and the knowledge of the employer of notice of the occurrence
31 of the injury, and any other facts that may be necessary and proper for the information of the
32 court, and shall state the matter in dispute and the claims of the petitioner with reference to it;
33 provided, that no petition shall be filed within twenty-one (21) days of the date of the injury and
34 no petition regarding any other obligation established under chapters 29 -- 38 of this title shall be

1 filed until twenty-one (21) days after written demand for payment upon the employer or insurer
2 or written notice to the employer or insurer of failure to fulfill the obligation, except that any
3 petition alleging the non-payment or late payment of weekly compensation benefits, attorneys'
4 fees, and costs, may be filed after fourteen (14) days from the date the payment is due as set forth
5 in sections 28-35-42, 28-35-43, and 28-35-20(c). Medical bills for services ordered paid by
6 decree or pretrial order shall be paid within fourteen (14) days of the entry of the decree or order.
7 In the event that the bills are not paid within the fourteen (14) day period, a petition may be filed
8 to enforce said order or decree without any additional written notice to the employer or insurer.

9 (b) (1) If one or more claims are filed for an injury and there are two (2) or more
10 insurers, any one of which may be held to be liable to pay compensation, and the judge
11 determines that the injured employee would be entitled to receive compensation but for the
12 existence of a controversy as to which one of the insurers is liable to pay compensation, one of
13 the insurers shall be selected by a judge of the workers' compensation court, to pay to the injured
14 employee the compensation, pending a final decision of the workers' compensation court as to the
15 matter in controversy, and that decision shall require that the amount of compensation paid shall
16 be deducted from the award if made against another insurer and shall be paid by that other insurer
17 to the insurer selected by the judge.

18 (2) The workers' compensation court shall award compensation, costs, and attorneys'
19 fees in its discretion if one of the insurers is held to be liable following the hearing.

20 (c) If any determination of the workers' compensation court entitles an employee to
21 retroactive payment of weekly benefits, the court shall award to the employee interest at the rate
22 per annum provided in section 9-21-10 on that retroactive weekly payment from six (6) months
23 subsequent to the date that the employee first filed a petition for benefits to the time when that
24 retroactive payment is actually made. If the proceedings are unduly delayed by or at the request
25 of the employee or his or her attorney, the judge may reduce or eliminate interest on retroactive
26 payment; provided, that the provisions of this section as they relate to interest shall apply only to
27 petitions filed on or after July 1, 1984.

28 (d) Any fine, penalty, or interest expense incurred by an insurer under this section may
29 not be used as an expense for the purpose of seeking a rate increase before the department of
30 business regulation.

31 **28-35-12.1. Prompt decision required.** -- The judge who hears a case pursuant to
32 section 28-35-12 shall render his or her decision no later than thirty (30) days after each party has
33 completed presenting its case. This provision shall not apply in any case for which the judge has
34 shown just cause, as determined by rules [of practice](#) of the workers' compensation court adopted

1 pursuant to the authority granted to the court by section 28-29-26, for delay beyond thirty (30)
2 days.

3 **28-35-14. Copies of petition to respondents.** -- Upon filing with the ~~administrator~~
4 [workers' compensation court](#) of any petition, stating the general nature of any claim as to which
5 any dispute or controversy may have arisen, the petitioner shall serve a copy of the petition on the
6 respondent or respondents in accordance with the workers' compensation court rules of practice.

7 **28-35-17. Notice and conduct of hearings.** -- (a) Upon the filing of any petition the
8 court shall assign the matter to a judge. The court shall issue notice at that time, advising the
9 parties of the judge to whom the case has been assigned and the date for pretrial conference in
10 accordance with section 28-35-20.

11 (b) Upon filing of any claim for a trial, following the pretrial conference held in
12 accordance with section 28-35-20, the judge shall fix a time for trial and give notice of it in
13 accordance with [the](#) rules of ~~procedure~~ [practice](#) promulgated by the court but the initial hearing
14 shall be fixed not later than thirty (30) days next after filing the claim for a trial. The court shall
15 cause notice of the trial to be given to each interested party in accordance with [the](#) rules [of](#)
16 [practice](#) ~~and regulations~~ promulgated by the court. The judge shall proceed to hear the matter as
17 the justice of the case may require, and may allow amendments to the petition and the answer at
18 any stage of the proceedings. Hearings may be adjourned from time to time for just and sufficient
19 cause, and hearings may be held at the places that the workers' compensation court shall
20 designate.

21 **28-35-20. Informal pretrial conference.** -- (a) Before any case shall proceed to a trial,
22 the judge shall conduct a mandatory pretrial conference within twenty-one (21) days of the date
23 of filing with a view to expediting the case and reducing the issues in dispute to a minimum,
24 notice of which shall be sent by the administrator to the parties or to their attorneys of record. The
25 conference shall be informal and no oral testimony shall be offered or taken. Any statement then
26 made by either party shall in the absence of agreement be without prejudice, but any agreement
27 then made shall be binding.

28 (b) Within a reasonable time of receipt, all medical reports and documentary evidence
29 which the parties possess and which the parties intend to present as evidence at the pretrial
30 conference shall be provided to the opposing party.

31 (c) At the pretrial conference, the judge shall make every effort to resolve any
32 controversies or to plan for any subsequent trial of the case. The judge shall render a pretrial order
33 immediately at the close of the pretrial conference. The pretrial order shall be set forth in a
34 simplified manner on forms prescribed by the workers' compensation court. It may reflect any

1 agreements reached between the parties, but shall grant or deny, in whole or in part, the relief
2 sought by the petitioner. Subject to the provisions of subsection 45-21.2-9(j), the pretrial order
3 shall be effective upon entry. Any payments ordered by it including, but not limited to, weekly
4 benefits, medical expenses, costs, and attorneys' fees, shall be paid within fourteen (14) days of
5 the entry of the order.

6 (d) Any party aggrieved by the entry of the order by the judge may claim a trial on any
7 issue that was not resolved by agreement at the pretrial conference by filing with ~~the~~
8 ~~administrator of~~ the workers' compensation court within five (5) days of the date of the entry of
9 the order, exclusive of Saturdays, Sundays and holidays, a claim for a trial on forms prescribed by
10 ~~the administrator of~~ the workers' compensation court. If no timely claim for a trial is filed or is
11 filed and withdrawn, the pretrial order shall become, by operation of law and without further
12 action by any party, a final decree of the workers' compensation court.

13 (e) All trials shall be assigned for hearing and decision to the same judge who presided
14 over the pretrial of the matter. Notice of the trial shall be sent by the ~~administrator~~ workers'
15 compensation court to the parties and to their attorneys of record. All trials shall be de novo,
16 except that issues resolved by agreement at the pretrial conference may not be reopened. Any
17 other case or dispute under chapters 29 -- 38 of this title that arises during the pendency of this
18 trial, shall be forwarded immediately to the same judge for pretrial in accordance with this section
19 and for any subsequent trial.

20 (f) If after trial and the entry of a final decree, it is determined that the employee or
21 medical services provider was not entitled to the relief sought in the petition, the employer or
22 insurer shall be reimbursed from the workers' compensation administrative fund, described in
23 chapter 37 of this title, to the extent of any payments made pursuant to the pretrial order to which
24 there is no entitlement.

25 **28-35-24. Examination by or opinion of impartial physician.** -- (a) Whenever the
26 testimony presented at any hearing indicates a dispute, or creates doubt, as to the extent, nature,
27 or cause of disability or death, the workers' compensation court may direct that the injured
28 employee be examined, or may obtain an opinion without examination of an impartial, competent
29 physician designated by the workers' compensation court who is not under contract with or
30 regularly employed or regularly retained by a compensation insurer or self-insured employer.

31 (b) The expense of the examination shall be paid by the employer. The report of the
32 examination shall be transmitted ~~in writing~~ to the workers' compensation court and a copy of it
33 shall be furnished by the workers' compensation court to each party who shall have an
34 opportunity to rebut it on further hearing.

1 **28-35-27. Decision of controversies -- Decree.** -- (a) In any controversy over which the
2 workers' compensation court has jurisdiction pursuant to this chapter and Rhode Island general
3 law section 45-21.2-9, any judge of that court shall, pursuant to sections 28-35-11 -- 28-35-28,
4 and the ~~procedural~~ rules of practice of the court, hear all questions of law and fact involved in the
5 controversy and presented by any party in interest, and he or she shall within ten (10) days after
6 the hearing, unless the parties otherwise agree, decide the merits of the controversy pursuant to
7 the law and the fair preponderance of the evidence and ~~notify the administrator of~~ the court ~~of the~~
8 ~~decision, who~~ shall immediately notify the parties.

9 (b) Within seventy-two (72) hours of notice, exclusive of Saturdays, Sundays, and
10 holidays, the judge shall enter a decree upon the decision, which shall contain findings of fact, but
11 within that time any party may appear and present a form of decree for consideration.

12 **28-35-28. Appeal to appellate division.** -- (a) Any person aggrieved by the entry of a
13 decree by a judge may appeal to the appellate division established pursuant to this section by
14 filing with ~~the administrator of~~ the court within five (5) days of the date of the entry of a decree,
15 exclusive of Saturdays, Sundays, and holidays, a claim of appeal and, subject to the rules of
16 practice of the court, by filing a request for a transcript of the testimony and ruling or any part
17 thereof desired. Within any time that a judge shall fix, either by an original fixing or otherwise,
18 the appellant shall file with ~~the administrator of~~ the court reasons of appeal stating specifically all
19 matters determined adversely to him or her which he or she desires to appeal, together with so
20 much of the transcript of testimony and rulings as he or she deems pertinent, and within ten (10)
21 days after that the parties may file with ~~the administrator of~~ the court those briefs and memoranda
22 that they may desire concerning the appeal. The chief judge shall appoint appellate panels of three
23 (3) members of the court to hear any claim of appeal and the decision of the appellate panel shall
24 be binding on the court. The three (3) members of the appellate panel shall immediately review
25 the decree upon the record of the case and shall file a decision pursuant to the law and the fair
26 preponderance of the evidence within ten (10) days of the expiration of the time within which the
27 parties may file briefs and memoranda. Upon consideration of the appeal, the appellate panel
28 shall affirm, reverse, or modify the decree appealed from, and may itself take any further
29 proceedings that are just, or may remand the matter to the trial judge for further consideration of
30 any factual issue that the appellate division may raise, including the taking of additional evidence
31 or testimony by the trial judge. It shall be within the prerogative of the appellate panel to remand
32 a matter to the trial judge. If the decision requires the entry of a new decree, notice shall be given
33 the parties, and the new decree shall be entered in the same manner as the original decree, but if
34 the decision of two (2) appellate panel judges does not require the entry of a new decree, the

1 decree shall be affirmed. Any member of the appellate panel may, for cause, disqualify himself or
2 herself from hearing any appeal that may come before the appellate panel.

3 (b) The findings of the trial judge on factual matters shall be final unless an appellate
4 panel finds them to be clearly erroneous. The court may award costs, including reasonable
5 attorney fees, to the prevailing party when the appellate panel finds there was complete absence
6 of a justiciable issue of either law or fact.

7 **28-35-28.1. Reports of hearings -- Transcripts.** -- (a) Hearings reporters, or electronic
8 court reporters, shall report stenographically, or electronically, the proceedings in the trial of
9 every action or proceeding in the workers' compensation court. Electronic court reporting shall be
10 used only when hearings reporters are unavailable for any reason.

11 (b) Each hearings reporter, or electronic court reporter, shall also, upon the order of any
12 judge in the court, transcribe his or her report to be filed with the ~~judge in the case~~ court. He or
13 she shall also make a transcript of the whole or any part of that report upon request, filed with the
14 ~~administrator~~ court, by either party to the action or proceeding, and when completed and within
15 the time limited by the court for filing the transcript, shall immediately deliver it to the party
16 ordering it, or to the attorney of record of that party. For this service, the reporter shall be paid a
17 reasonable compensation, not less than five dollars (\$5.00), and not exceeding three dollars
18 (\$3.00) per page for originals and one dollar and fifty cents (\$1.50) per page for copies of it, to be
19 allowed by the court. If the transcript is used in subsequent proceedings in the cause, the cost of it
20 may be allowed as a part of the costs.

21 **28-35-31. Transcript on appeal.** -- (a) Upon the filing of reasons of appeal and
22 transcript, ~~the administrator of~~ the workers' compensation court shall present the transcript to the
23 judge who heard the cause, and in case of vacancy in office, or for any cause, ~~the administrator~~
24 where the court is unable to present the transcript to the judge who heard the cause, then the
25 transcript shall be presented to any other judge, and that other judge shall have full power to
26 examine and pass upon and allow the transcript. The judge to whom the transcript has been
27 presented ~~by the administrator~~ shall, after examination, restore the transcript to the files ~~of the~~
28 ~~administrator~~ with a certificate of his or her action.

29 (b) Upon an appeal being taken and the transcript of the testimony as may be required
30 being allowed and returned, the ~~administrator of the~~ workers' compensation court shall
31 immediately certify the cause and all the papers of it to the supreme court.

32 (c) In case of failure to allow and return the transcript within twenty (20) days from its
33 filing a hearing may be had on the question of the correctness of the transcript before the workers'
34 compensation court.

1 **28-35-37. Delay of process for execution of decree.** -- No process for the execution of
2 any decree of the workers' compensation court from which an appeal may be taken shall issue
3 until the expiration of the appeal period, unless all parties against whom the decree is made,
4 ~~waive an~~ file with the court a waiver of appeal ~~with the administrator~~ or by causing an entry
5 thereof to be made on the docket.

6 **28-35-45. Review and modification of decrees.** -- (a) At any time after the date of the
7 approval of any agreement or at any time after the date of the entry of any decree concerning
8 compensation, and if compensation has ceased under the agreement or decree, within ten (10)
9 years after that, any agreement, award, order, finding, or decree may be from time to time
10 reviewed by the workers' compensation court, upon its own motion or upon a petition of either
11 party upon forms prescribed ~~and furnished~~ by the court, after due notice to the interested parties:

12 (1) Upon the ground that the:

13 (i) Incapacity of the injured employee has diminished, ended, increased, or returned;

14 (ii) Employee has recovered from the effects of his or her work-related injury and is
15 disabled only as a result of a preexisting condition;

16 (iii) Employee is able to return to the same work which he or she performed at the time
17 of his or her injury;

18 (iv) Employee has refused an offer of suitable employment; or

19 (v) Weekly compensation payments have been based upon an erroneous average weekly
20 wage; or

21 (2) Regarding any other obligation established under chapters 29 -- 38 of this title.

22 (b) Upon this review the workers' compensation court may decrease, suspend, increase,
23 commence, or recommence compensation payments in accordance with the facts, or make any
24 other order that the justice of the case may require. No review shall affect the agreement, award,
25 order, finding, or decree as regards money already paid, except that an award increasing the
26 compensation rate may be made effective from the date of the injury, and except that if any part
27 of the compensation due or to become due is unpaid, an award decreasing the compensation rate
28 may be made effective from the date of injury, and any payments made prior thereto in excess of
29 the decreased rate shall be deducted from any unpaid compensation, in the manner and by the
30 methods that may be determined by the workers' compensation court.

31 (c) Relief on review shall not be denied an employee or granted an employer or his or
32 her insurer on the grounds that the employee is incapacitated by an injury or disease which is
33 different from the one for which the employee was paid compensation if the injury or disease
34 incapacitating the employee results from an injury or disease for which the employee was paid

1 compensation.

2 **28-35-46. Notice of intent to discontinue, suspend, or reduce payments -- Filing --**

3 **Form.** -- Before an employer may discontinue, suspend, or reduce compensation payments
4 whether they are being received under an agreement, memorandum of agreement, award, order,
5 finding, or decree, or when suitable alternative employment has been offered to the employee
6 pursuant to section 28-33-18.2, the employer shall notify the court and the employee of his or her
7 intention to discontinue, suspend, or reduce payments and the reason for doing so by filing with
8 the ~~judge~~ court an affidavit setting forth the factual basis for filing the petition to review along
9 with a copy of the medical reports upon which the employer seeks to justify the discontinuance,
10 suspension, or reduction in payments. A copy of the affidavit and medical report shall be
11 forwarded to the employee. The notice of intention to discontinue, suspend, or reduce payments
12 must be given fifteen (15) days prior to the proposed date of discontinuance, suspension, or
13 reduction; provided, that where an employee has returned to work at an average weekly wage
14 equal to or in excess of that which he or she was earning at the time of his or her injury, not
15 including overtime, the notice of intention to discontinue, suspend, or reduce the payments
16 provided for in this section may be given five (5) days prior to the proposed date of
17 discontinuance. Notices shall be in substantially the following form:

18 Notice to Workers' Compensation Court and Employee

19 of

20 Intention to Discontinue, Suspend, or Reduce Payment

21 You are hereby notified that the undersigned employer intends on the..... day
22 of..... 20....., to discontinue, suspend, or reduce the payments of compensation to the
23 above-named employee for the following reasons, to wit:

24 (1) Employee has returned to work at an average weekly wage equal to or in excess of
25 that which he or she was earning at the time of his or her injury, not including overtime.

26 (2) Employee has returned to work and is earning wages in the sum of..... dollars
27 weekly.

28 (3) Employee has been discharged by his or her treating physician on the..... day
29 of..... 20.....

30 **28-35-54. Certification of papers to court.** -- Whenever the director certifies to the

31 workers' compensation court papers, agreements, and documents in any proceedings as are
32 provided in chapters 29 -- 38 of this title, he or she shall certify them to ~~the administrator of~~ the
33 workers' compensation court.

34 **28-35-55. Filing day or required act falling on weekend or holiday.** -- Whenever,

1 under chapters 29 -- 38 of this title, the day, or the last day, for the filing with ~~the administrator of~~
2 the workers' compensation court, of any original petition or other petition, motion, decree, claim
3 of appeal, reasons of appeal, brief, or other document ~~in writing~~, or for the doing of any act
4 required or permitted to be done by those chapters, falls on Saturday, Sunday, or a legal holiday,
5 the act or filing may be done on the next succeeding business day.

6 **28-35-61. Decrees procured by fraud.** -- (a) The workers' compensation court may,
7 upon petition of an employee, the dependents of a deceased employee, an employer, an insurance
8 carrier, or any other party in interest, vacate, modify, or amend any final decree entered within a
9 period of six (6) months of the date such decree was entered ~~prior to the filing of the petition~~,
10 either by a single judge or by the full court, if it appears that the decree:

11 (1) Has been procured by fraud; or

12 (2) Does not accurately and completely set forth and describe the nature and location of
13 all injuries sustained by the employee.

14 (b) The petition shall be served in the same manner as is provided for in chapters 29 --
15 38 of this title for all other petitions.

16 (c) The workers' compensation court shall hear any and all petitions and make its
17 decision in accordance with those chapters.

18 SECTION 7. Section 28-35-35 of the General Laws in Chapter 28-35 entitled "Workers'
19 Compensation - Procedure" is hereby repealed.

20 ~~**28-35-35. Motion day in supreme court.** -- Any court day in the supreme court shall be
21 motion day for the purpose of hearing a motion to assign the appeal for hearing.~~

22 SECTION 8. Section 28-36-15 of the General Laws in Chapter 28-36 entitled "Workers'
23 Compensation - Insurance" is hereby amended to read as follows:

24 **28-36-15. Penalty for failure to secure compensation -- Personal liability of**
25 **corporate officers.** -- (a) Any employer required to secure the payment of compensation under
26 chapters 29 -- 38 of this title who knowingly fails to secure that compensation shall be guilty of a
27 felony and shall be subject to imprisonment for up to two (2) years. In addition to the foregoing,
28 the employer shall be subject to a civil penalty punished by a fine not to exceed one thousand
29 dollars (\$1,000) for each day of noncompliance with the requirements of this title. The director
30 shall institute any and all reasonable measures to comprehensively monitor, investigate, and
31 otherwise discover all employer noncompliance with this section and shall establish rules and
32 regulations governing these measures. Each day shall constitute a separate and distinct offense for
33 calculation of the penalty. Where that employer is a corporation the president, vice president,
34 secretary, treasurer, and other officers of the corporation, shall be severally liable for the fine,

1 penalty or imprisonment as provided in this section for the failure of that corporation to secure the
2 payment of compensation. The president, vice president, secretary, treasurer, and other officers of
3 the corporation shall also be severally personally liable, jointly with the corporation for any
4 compensation or other benefit which may accrue under those chapters in respect to any injury
5 which may occur to any employee of that corporation while it fails to secure the payment of
6 compensation as required by those chapters.

7 (b) Where the employer is a limited liability company, the managers and managing
8 members who knowingly fail to secure the payment of compensation under chapters 29 -- 38 of
9 this title shall be guilty of a felony and shall be subject to imprisonment for up to two (2) years.
10 The managers and managing members shall also be severally liable for the fine, penalty or
11 imprisonment as provided in this section for the failure of that company to secure the payment of
12 compensation. The managers and managing members shall be severally personally liable, jointly
13 with the company, for any compensation or other benefit which may accrue under those chapters
14 in respect to any injury which may occur to any employee of that company while it fails to secure
15 the payment of compensation as required by those chapters.

16 (c) Where the employer is a partnership, or a registered limited liability partnership, the
17 partners who knowingly fail to secure the payment of compensation under chapters 29 -- 38 of
18 this title shall be guilty of a felony and shall be subject to imprisonment for up to two (2) years.
19 The partners shall also be severally liable for the fine, penalty, or imprisonment as provided in
20 this section for the failure of that partnership to secure the payment of compensation. The partners
21 shall be severally personally liable, jointly with the partnership, for any compensation or other
22 benefit which may accrue under those chapters in respect to any injury which may occur to any
23 employee of that partnership while it fails to secure the payment as required by those chapters.

24 (d) Where the employer is a limited partnership or a registered limited liability limited
25 partnership, the general partners who knowingly fail to secure the payment of compensation
26 under chapters 29 -- 38 of this title shall be guilty of a felony and shall be subject to
27 imprisonment for up to two (2) years. The general partners shall also be severally liable for the
28 fine, penalty or imprisonment as provided in this section for the failure of that limited partnership
29 to secure the payment of compensation. The general partners shall be severally personally liable,
30 jointly with the limited partnership, for any compensation or other benefit which may accrue
31 under those chapters in respect to any injury which may occur to any employee of that partnership
32 while it fails to secure the payment of compensation as required by those chapters.

33 (e) All criminal actions for any violation of this section shall be prosecuted by the
34 attorney general. The attorney general shall prosecute actions to enforce the payment of penalties

1 and fines at the request of the director. The workers' compensation court shall have jurisdiction
2 over all civil actions filed pursuant to this section.

3 The court shall consider the following factors in assessing a civil penalty: gravity of
4 offense, resources of the employer, effect of the penalty on employees of the company, the reason
5 for the lapse in coverage, and the recommendation of the director. Following a review of the
6 factors set forth above, the court may suspend all or a part of a civil penalty or shall establish a
7 time table for compliance with any court order.

8 (f) (1) As soon as practicable after the director receives notice of noncompliance under
9 this section, the director shall determine whether cause exists for the imposition of a civil penalty.
10 Unless the director determines that the noncompliance was unintentional or the result of a clerical
11 error and subject to the administrative proceedings under subsection (g) of this section, the
12 director shall commence an action in the workers' compensation court to assess a civil penalty
13 against the employer as set forth in subsection (a) of this section and shall refer the matter to the
14 attorney general for prosecution of criminal charges.

15 (2) The director shall bring a civil action in the workers' compensation court to collect all
16 payments and penalties ordered and not paid. All civil actions for any violations of this chapter or
17 of any of the rules or regulations promulgated by the director, or for the collection of payments in
18 accordance with section 28-37-13, 28-33-17.3(a)(2) or 28-33-17.3(a)(3) or civil penalties under
19 this chapter, shall be prosecuted by any qualified member of the Rhode Island bar whom the
20 director may designate, in the name of the director, and the director is exempt from giving surety
21 for costs in any proceedings.

22 (g) In the case of unintentional noncompliance or noncompliance resulting from clerical
23 error where the uninsured period is less than one year from the date of discovery and there were
24 no employees injured during the uninsured period and the employer has not been subject to any
25 other findings of noncompliance with these chapters, the director shall assess an administrative
26 penalty of not less than the estimated annual workers' compensation insurance premium for that
27 employer and not more than triple that amount. Any party has the right to appeal the orders of the
28 director. Such appeal shall be to the workers' compensation court in the first instance and
29 thereafter from the workers' compensation court to the Rhode Island supreme court in accordance
30 with section 28-35-30.

31 (h) The director shall collect all payments under this chapter under the rules and
32 regulations that may be set forth by the director. All fines collected pursuant to this section shall
33 be deposited to a restricted receipt account to be administered by the director of the department of
34 labor and training in his or her sole discretion to carry out chapters 29 -- 38 of this title.

1 (i) (1) In that the operation of a commercial enterprise without the required workers'
2 compensation insurance is a crime and creates a clear and present danger of irreparable harm to
3 employees who are injured while the employer is uninsured, the director shall suspend the
4 operation of the business immediately and until workers' compensation and employers' liability
5 insurance is secured consistent with these chapters. The director shall lift the suspension upon
6 receipt of satisfactory proof of insurance and evidence sufficient to satisfy the director that the
7 employer is in full compliance with these chapters. Any party has the right to appeal the
8 suspension to the workers' compensation court where the matter shall proceed pursuant to the
9 workers' compensation court rules of procedure.

10 (2) In the event that the employer shall fail to comply with the director's order of
11 suspension, the director may apply immediately to the workers' compensation court for an order
12 directing the employer to comply with the director's prior orders.

13 (3) Actions filed with the workers' compensation court pursuant to this section shall not
14 be subject to a pretrial conference in accordance with section 28-35-20 but shall be assigned
15 consistent with the workers' compensation court rules of ~~procedure~~ [practice](#).

16 (4) Interest shall accrue on unpaid penalties during the pendency of any appeal at the rate
17 per annum provided in section 9-21-10.

18 (j) These provisions shall take effect upon passage except section 28-29-2(6)(iv) which
19 shall take effect on January 1, 2006.

20 SECTION 9. This act shall take effect upon passage.

=====
LC003719
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO WORKERS' COMPENSATION -- ELECTRONIC FILING

- 1 This act would comprehensively clarify and update the practice and procedures of the
- 2 Worker's Compensation Court.
- 3 This act would take effect upon passage.

=====
LC003719
=====