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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

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

Introduced By: Senators Lombardo, and Lombardi

Date Introduced: February 27, 2014

Referred To: Senate Labor

(Labor and Training)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-42-3 and 28-42-8 of the General Laws in Chapter 28-42
2 entitled "Employment Security - General Provisions" are hereby amended to read as follows:

3 **28-42-3. Definitions. --** The following words and phrases, as used in chapters 42 -- 44 of
4 this title, have the following meanings unless the context clearly requires otherwise:

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

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

10 (3) "Base period", with respect to an individual's benefit year means the first four (4) of
11 the most recently completed five (5) calendar quarters immediately preceding the first day of an
12 individual's benefit year. For any individual's benefit year and for any individual deemed
13 monetarily ineligible for benefits for the "base period" as defined in this subdivision, the
14 department shall make a re-determination of entitlement based upon the alternate base period
15 which consists of the last four (4) completed calendar quarters immediately preceding the first
16 day of the claimant's benefit year. Notwithstanding anything contained to the contrary in this
17 subdivision, the base period shall not include any calendar quarter previously used to establish a
18 valid claim for benefits; provided, that notwithstanding any provision of chapters 42 -- 44 of this

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

6 (4) "Benefit" means the money payable to an individual as compensation for his or her
7 wage losses due to unemployment as provided in these chapters;

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

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

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

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

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

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

28 ~~(10)~~(11) "Credit week", prior to July 1, 2012, means any week within an individual's
29 base period in which that individual earned wages amounting to at least twenty (20) times the
30 minimum hourly wage as defined in chapter 12 of this title for performing services in
31 employment for one or more employers subject to chapters 42 -- 44 of this title, and for the period
32 July 1, 2012 through July 5, 2014, means any week within an individual's base period in which
33 that individual earned wages amounting to at least his or her weekly benefit rate for performing
34 services in employment for one or more employers subject to chapters 42 – 44 of this title;

1 ~~(11)~~(12) "Crew leader", for the purpose of subdivision (18) of this section, means an
2 individual who:

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

4 (ii) Pays (either on his or her own behalf or on behalf of that other person) the
5 individuals so furnished by him or her for the service in agricultural labor performed by them;
6 and

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

10 ~~(12)~~(13) "Director" means the head of the department of labor and training or his or her
11 authorized representative;

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

16 ~~(14)~~(15) "Employee" means any person who is or has been employed by an employer
17 subject to those chapters and in employment subject to those chapters;

18 ~~(15)~~(16) "Employer" means:

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

20 (ii) Any employing unit which for some portion of a day on and after January 1, 1956,
21 has or had in employment within any calendar year one or more individuals; except, however, for
22 "domestic service employment", as defined in subdivision (13) of this section;

23 (iii) For the effective period of its election pursuant to section 28-42-12, any other
24 employing unit which has elected to become subject to chapters 42 -- 44 of this title;

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

32 ~~(16)~~(17) "Employing unit" means any person, partnership, association, trust, estate, or
33 corporation whether domestic or foreign, or its legal representative, trustee in bankruptcy,
34 receiver, or trustee, or the legal representative of a deceased person, which has, or had in his or

1 her employ one or more individuals. For the purposes of subdivision (13) of this section a private
2 home shall be considered an employing unit only if the person for whom the domestic service
3 was performed paid cash remuneration of one thousand dollars (\$1,000) or more in any calendar
4 quarter in the current calendar year or the preceding calendar year to individuals employed in that
5 domestic service in that private home;

6 ~~(17)~~(18)(i) "Employment", subject to sections 28-42-4 -- 28-42-10, means service,
7 including service in interstate commerce, performed for wages or under any contract of hire,
8 written or oral, express or implied; provided, that service performed shall also be deemed to
9 constitute employment for all the purposes of chapters 42 -- 44 of this title, if performed by an
10 individual in the employ of a nonprofit organization as described in subdivision (24) of this
11 section except as provided in section 28-42-8(7).

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

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

21 ~~(18)~~(19) "Employment -- Crew leader". For the purposes of subdivision (14) of this
22 section:

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

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

30 (ii) That individual is not an employee of that other person within the meaning of
31 subdivision (14) of this section; and

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

34 (A) That other person and not the crew leader shall be treated as the employer of that

1 individual; and

2 (B) That other person shall be treated as having paid cash remuneration to that individual
3 in an amount equal to the amount of cash remuneration paid to that individual by the crew leader
4 (either on his or her own behalf or on behalf of that other person) for the service in agricultural
5 labor performed for that other person;

6 ~~(19)~~(20) "Employment office" means a free public employment office, or its branch,
7 operated by the director or by this state as part of a system of free public employment offices, or
8 any other agency that the director may designate with the approval of the Social Security
9 Administration;

10 ~~(20)~~(21) "Fund" means the employment security fund established by this chapter;

11 ~~(21)~~(22) "Governmental entity" means state and local governments in this state and
12 includes the following:

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

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

16 (iii) Any instrumentality of any of these entities and one or more other states or political
17 subdivisions;

18 ~~(22)~~(23) "Hospital" means an institution that has been licensed, certified, or approved by
19 the department of health as a hospital;

20 ~~(23)~~(24)(i) "Institution of higher education" means an educational institution in this state
21 which:

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

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

26 (C) Provides:

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

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

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

32 (D) Is a public or other non-profit institution.

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

1 ~~(24)~~(25) "Nonprofit organization" means an organization or group of organizations as
2 defined in 26 U.S.C. section 501(c)(3) which is exempt from income tax under 26 U.S.C. section
3 501(a);

4 ~~(25)~~(26)(i) "Partial unemployment". An employee shall be deemed partially unemployed
5 in any week of less than full-time work if he or she fails to earn in wages for that week an amount
6 equal to the weekly benefit rate for total unemployment to which he or she would be entitled if
7 totally unemployed and eligible.

8 (ii) For the purposes of this subdivision and subdivision (27) of this section, "Wages"
9 includes only that part of remuneration for any work, which is in excess of one-fifth (1/5) of the
10 weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar
11 (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one
12 week, and "services" includes only that part of any work for which remuneration in excess of
13 one-fifth (1/5) of the weekly benefit rate for total unemployment, rounded to the next lower
14 multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed
15 and eligible in any one week is payable; provided, that nothing contained in this paragraph shall
16 permit any individual to whom remuneration is payable for any work performed in any week in
17 an amount equal to or greater than his or her weekly benefit rate to receive benefits under this
18 subdivision for that week.

19 (iii) Notwithstanding anything contained to the contrary in this subdivision, "Services",
20 as used in this subdivision and in subdivision (27) of this section, does not include services
21 rendered by an individual under the exclusive supervision of any agency of this state, or any of its
22 political subdivisions, by which the services are required solely for the purpose of affording
23 relief, support, or assistance to needy individuals performing those services, or services
24 performed by members of the national guard and organized reserves in carrying out their duties in
25 weekly drills as members of those organizations. "Wages", as used in this subdivision and in
26 subdivision (27) of this section, does not include either remuneration received by needy
27 individuals for rendering the aforementioned services when that remuneration is paid exclusively
28 from funds made available for that purpose out of taxes collected by this state or any of its
29 political subdivisions, or remuneration received from the federal government by members of the
30 national guard and organized reserves, as drill pay, including longevity pay and allowances;

31 ~~(26)~~(27) "Payroll" means the total amount of all wages paid by the employer to his or her
32 employees for employment;

33 ~~(27)~~(28) "Total unemployment." An individual shall be deemed totally unemployed in
34 any week in which he or she performs no services (as used in subdivision (25) of this section) and

1 for which he or she earns no wages (as used in subdivision (25) of this section), and in which he
2 or she cannot reasonably return to any self-employment in which he or she has customarily been
3 engaged;

4 ~~(28)~~(29) "Wages" means all remuneration paid for personal services on or after January
5 1, 1940, including commissions and bonuses and the cash value of all remuneration paid in any
6 medium other than cash, and all other remuneration which is subject to a tax under a federal law
7 imposing a tax against which credit may be taken for contributions required to be paid into a state
8 unemployment fund. Gratuities customarily received by an individual in the course of his or her
9 employment from persons other than his or her employing unit shall be treated as wages paid by
10 his or her employing unit. The reasonable cash value of remuneration paid in any medium other
11 than cash, and the reasonable amount of gratuities, shall be estimated and determined in
12 accordance with rules prescribed by the director; except that for the purpose of this subdivision
13 and of sections 28-43-1 -- 28-43-14, this term does not include:

14 (i) That part of remuneration which is paid by an employer to an individual with respect
15 to employment during any calendar year, after remuneration equal to the amount of the taxable
16 wage base as determined in accordance with section 28-43-7 has been paid during that calendar
17 year by the employer or his or her predecessor to that individual; provided, that if the definition of
18 "Wages" as contained in the Federal Unemployment Tax Act is amended to include remuneration
19 in excess of the taxable wage base for that employment, then, for the purposes of sections 28-43-1
20 -- 28-43-14, "Wages" includes the remuneration as previously set forth up to an amount equal to
21 the dollar limitation specified in the federal act. For the purposes of this subdivision,
22 "Employment" includes services constituting employment under any employment security law of
23 another state or of the federal government;

24 (ii) The amount of any payment made to, or on behalf of, an employee under a plan or
25 system established by an employer which makes provision for his or her employees generally or
26 for a class or classes of his or her employees (including any amount paid by an employer or an
27 employee for insurance or annuities, or into a fund, to provide for any such payment), on account
28 of:

- 29 (A) Retirement;
- 30 (B) Sickness or accident disability;
- 31 (C) Medical and hospitalization expenses in connection with sickness or accident
32 disability; or
- 33 (D) Death; provided, that the employee has not the:
- 34 (I) Option to receive, instead of provision for that death benefit, any part of that payment

1 or, if that death benefit is insured, any part of the premiums (or contributions to premiums) paid
2 by his or her employer; and

3 (II) Right, under the provisions of the plan or system or policy of insurance providing for
4 that death benefit, to assign that benefit, or to receive a cash consideration in lieu of that benefit
5 either upon his or her withdrawal from the plan or system providing for that benefit or upon
6 termination of the plan or system or policy of insurance, or of his or her employment with that
7 employer.

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

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

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

12 (iii) Any amount paid by an employee or an amount paid by an employer under a benefit
13 plan organized under Section 125 of the Internal Revenue Code [26 U.S.C. section 125_.

14 ~~(29)~~(30) "Week" means the seven (7) day calendar week beginning on Sunday at 12:01
15 A.M. and ending on Saturday at 12:00 A.M. midnight.

16 **28-42-8. Exemptions from "employment".** -- "Employment" does not include:

17 (1) Domestic service in a private home performed for a person who did not pay cash
18 remuneration of one thousand dollars (\$1,000) or more in any calendar quarter after December
19 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in
20 that domestic service in a private home;

21 (2) Service performed by an individual in the employ of a sole proprietorship or LLC-
22 single member filing as a sole proprietorship with the IRS for his or her son, daughter, or spouse,
23 and service performed by a child under the age of eighteen (18) in the employ of his or her father
24 or mother who is designated as a sole proprietorship or LLC-single member filing as a sole
25 proprietorship with the IRS, and service is performed by an individual under the age of eighteen
26 (18) in the employ of a partnership or LLC partnership consisting only of his or her parents or
27 domestic partners;

28 (3) Service performed in the employ of any other state or any of its political
29 subdivisions, the United States government, an instrumentality of any other state or states or their
30 political subdivisions, or of an instrumentality of the United States, except that if the Congress of
31 the United States permits states to require any instrumentalities of the United States to make
32 payments into an unemployment fund under a state unemployment compensation act, then, to the
33 extent permitted by Congress, and from and after the date as of which permission becomes
34 effective, all of the provisions of chapters 42 -- 44 of this title shall be applicable to those

1 instrumentalities and to services performed for those instrumentalities, in the same manner, to the
2 same extent, and on the same terms as to all other employers, employing units, individuals, and
3 services. If this state is not certified by the Secretary of Labor under 26 U.S.C. section 3304 for
4 any year, then the payments required of those instrumentalities with respect to that year shall be
5 deemed to have been erroneously collected within the meaning of section 28-43-12 and shall be
6 refunded by the director from the fund in accordance with section 28-43-12;

7 (4) Service performed:

8 (i) In the employ of:

9 (A) A church or convention or association of churches, or

10 (B) An organization which is operated primarily for religious purposes and which is
11 operated, supervised, controlled, or principally supported by a church or convention or
12 association of churches;

13 (ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of
14 his or her ministry or by a member of a religious order in the exercise of duties required by that
15 order;

16 (iii) In a facility conducted for the purpose of carrying out a program of rehabilitation for
17 individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or
18 providing remunerative work for individuals who, because of their impaired physical or mental
19 capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving
20 that rehabilitation or remunerative work;

21 (iv) As part of an unemployment work relief or work training program assisted or
22 financed in whole or in part by any federal agency or an agency of a state or one of its political
23 subdivisions, by an individual receiving that work relief or work training;

24 (v) In the employ of a hospital by a patient of the hospital; or

25 (vi) By an inmate of a custodial or penal institution;

26 (5) Service with respect to which unemployment compensation is payable under an
27 unemployment compensation system established by an act of Congress. The director is authorized
28 and directed to enter into agreements with the proper agencies under that act of Congress, which
29 agreements shall become effective ten (10) days after their publication as in the manner provided
30 in section 28-42-34 to provide reciprocal treatment to individuals who have, after acquiring
31 potential rights to benefits under chapters 42 -- 44 of this title acquired rights to unemployment
32 compensation under that act of Congress, or who have, after acquiring potential rights to
33 unemployment compensation under that act of Congress, acquired rights to benefits under those
34 chapters;

1 (6) Service covered by an election duly approved by the agency charged with the
2 administration of any other state or federal employment security law in accordance with an
3 arrangement pursuant to section 28-42-58 during the effective period of that election, except as
4 provided in section 28-42-3(15)(i);

5 (7) Services performed by an individual in any calendar quarter on or after January 1,
6 1972 in the employ of any organization exempt from income tax under 26 U.S.C. section
7 501(a)(other than services performed for an organization defined in section 28-42-3(24) or for
8 any organization described in 26 U.S.C. section 401(a) or under 26 U.S.C. section 521) if the
9 remuneration for that service is less than fifty dollars (\$50.00);

10 (8) Service which is occasional, incidental, and occurs irregularly, and is not in the
11 course of the employing unit's trade or business. Service for a corporation shall not be excluded;

12 (9) Service as a golf caddy, except as to service performed solely for a club with respect
13 to which the club alone bears the expense. A golf caddy, except as in this specifically provided
14 subdivision, shall not be construed to be an "employee" as defined in section 28-42-3(14);

15 (10) Notwithstanding any provisions of titles 5 and 27, service performed by an
16 individual as a real estate salesperson if all the service performed by that individual is performed
17 for remuneration solely by way of commission;

18 (11) Notwithstanding any provisions of titles 5 and 27, service performed by an
19 individual as an insurance broker, agent, or subagent if all the service performed by that
20 individual is performed for remuneration solely by way of commission. This exemption shall not
21 apply to service performed as industrial and debit insurance agents;

22 (12) Service performed by an individual who is enrolled at a nonprofit or public
23 educational institution which normally maintains a regular faculty and curriculum and normally
24 has a regular organized body of students in attendance at the place where its educational activities
25 are carried on, as a student in a full-time program, taken for credit at that institution which
26 combine academic instruction with work experience, if that service is an integral part of that
27 program, and that institution has so certified to the employer, except that this subdivision shall
28 not apply to service performed in a program established for or on behalf of an employer or group
29 of employers;

30 (13) Service performed by an individual on a boat engaged in catching fish or other
31 forms of aquatic animal life under an arrangement with the owner or operator of that boat
32 pursuant to which:

33 (i) That individual does not receive any cash remuneration other than a share of the
34 boat's catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale

1 of that catch; and

2 (ii) The operating crew of that boat is normally made up of fewer than ten (10)
3 individuals; and

4 (14) Services performed by a member of an ~~Americorp~~ [Americorps](#) program.

5 SECTION 2. Sections 28-43-31 and 28-43-35 of the General Laws in Chapter 28-43
6 entitled "Employment Security - Contributions" are hereby amended to read as follows:

7 **28-43-31. Allocation of benefit costs -- Reimbursable employers.** – (a) Each employer
8 that is liable for payments in lieu of contributions in accordance with section 28-43-29 shall pay
9 to the director for the fund the full amount of regular benefits paid plus the full amount of
10 extended benefits paid, less any federal payments to the state under section 204 of the Federal-
11 State Extended Unemployment Compensation Act of 1970, that are attributable to service in the
12 employ of that employer; provided, that for weeks of unemployment beginning on or after
13 January 1, 1979, governmental entities which are liable for reimbursement shall be responsible
14 for reimbursing the fund for the full amount of extended benefits so paid.

15 (b) Each employer that is liable for payments in lieu of contributions in accordance with
16 § 28-43-29 shall make payments to the director that shall include, but not be limited to, benefits
17 paid but denied on appeal or benefits paid in error which cannot be properly charged against
18 another employer either reimbursable or contributory; provided that if the benefits that were paid
19 in error are subsequently repaid those amounts shall be credited to the employer's account after
20 repayment is actually received by the director.

21 **28-43-35. Special rules regarding transfers of experience and assignment of rates.** --
22 Notwithstanding any other provisions of chapters 42 -- 44 of this title, the following shall apply
23 regarding assignment of rates and transfers of experience:

24 (a) If an employer transfers its trade or business, or a portion thereof, to another
25 employer and, at the time of the transfer, there is any common ownership, management or control
26 of the two (2) employers, then the unemployment experience attributable to the transferred trade
27 or business shall be transferred to the employer to whom such business is so transferred.
28 Furthermore, partial transfers may be made in the absence of common ownership at the discretion
29 of the director. The rates of both employers shall be recalculated in the following manner:

30 (1) The total payroll of the employees on the predecessor's payroll during the last
31 completed calendar quarter prior to the date of the transfer who are also on the payroll of the
32 successor when the transfer takes effect shall be divided by the predecessor's total payroll during
33 the last completed calendar quarter prior to the date of the transfer, and that percentage shall be
34 applied to the experience rating balances and payroll of the predecessor as of the end of the

1 experience year used to determine the contribution rate for the tax year in effect at the date of
2 transfer. The resulting amounts shall be subtracted from the experience rating balances and
3 payroll of the predecessor. The predecessor's remaining experience rating balances and payroll
4 shall be used to determine its contribution rate for the new tax year or for the remainder of the
5 current tax year, whichever is applicable, effective on the first day of the calendar quarter
6 following the date of the transfer; provided, that if the date of the transfer is the first day of the
7 calendar quarter then the new contribution rate shall take effect on the date of the transfer.

8 (2) The balances subtracted from the predecessor's account in subdivision (a)(1) of this
9 section, shall be combined with the experience rating balances and payroll of the successors as of
10 the end of the experience year used to determine the contribution rate for the tax year in effect at
11 the date of transfer. Those combined balances shall be used to determine the contribution rate for
12 the successor for the new tax year or for the remainder of the current tax year, whichever is
13 applicable, effective on the first day of the calendar quarter following the date of the transfer;
14 provided, that if the date of the transfer is the first day of the calendar quarter then the new
15 contribution rate shall take effect on the date of the transfer. For successors in business for less
16 than one experience year, their contribution rate for the new tax year or for the remainder of the
17 current tax year, whichever is applicable, shall be computed based on the transferred experience
18 rating balances and payroll of the predecessor and shall take effect on the first day of the calendar
19 quarter following the date of the transfer; provided, that if the date of the transfer is the first day
20 of the calendar quarter then the new contribution rate shall take effect on the date of the transfer.

21 (3) A successor shall be deemed to be an eligible employer if its experience combined
22 with that of its predecessors meets the requirements of subdivision 28-43-1(3). As used in this
23 section, "successor" means the employing unit to whom a transfer as provided in this section is
24 made, and "predecessor" means the employer making the transfer and may, if the context so
25 requires, be construed as referring only to the separate establishment transferred in case of the
26 transfer of a separate establishment.

27 (b) If, following a transfer of experience under subsection (a) of this section, the director
28 determines that a substantial purpose of the transfer of the trade or business was to obtain a
29 reduced liability for contributions, then the experience rating accounts of the employers involved
30 shall be combined and the combined rate assigned to each employer account.

31 (c) Whenever a person who is not an employer under this chapter at the time that person
32 acquires the trade or business of an employer, the unemployment experience of the acquired
33 business shall not be transferred to such person if the director finds that such person acquired the
34 business solely or primarily for the purposes of obtaining a lower rate of contributions. Instead,

1 such person shall be assigned the new employer rate under section 28-43-8.3. In determining
2 whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of
3 contributions, the director shall use objective factors which may include the cost of acquiring the
4 business, whether the person continued the business enterprise of the acquired business, how long
5 such business enterprise was continued, or whether a substantial number of new employees were
6 hired for performance of duties unrelated to the business activity conducted prior to the
7 acquisition.

8 (d) (1) If a person knowingly violates or attempts to violate subsections (a), (b) or (c) or
9 any other provision of this chapter related to determining the assignment of a contribution rate, or
10 if a person knowingly advises another person in a way that results in a violation of such
11 provision, the person shall be subject to the following penalties:

12 (i) If the person is an employer, then such employer shall be assigned the highest rate
13 assignable under this chapter for the rate year during which such violation or attempted violation
14 occurred and the three (3) rate years immediately following this rate year. However, if the
15 person's business is already at such highest rate for any year, or if the amount of increase in the
16 person's rate would be less than two percent (2%) for such year, then a penalty rate of
17 contributions of two percent (2%) of taxable wages shall be imposed for such year.

18 (ii) If the person is not an employer, such person shall be guilty of a misdemeanor and
19 subject to a civil money penalty of not more than five thousand dollars (\$5,000). Any such fine
20 shall be deposited in the Rhode Island General Fund.

21 (2) For purposes of this section, the term "knowingly" means having actual knowledge
22 of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

23 (3) For purposes of this section, the term "violates or attempts to violate" includes, but is
24 not limited to, intent to evade, misrepresentation or willful nondisclosure.

25 (4) In addition to the penalty imposed by subparagraph (1), any violation of this section
26 may also be prosecuted as a misdemeanor, and for each offense, the person may be subject to
27 imprisonment for a period not exceeding one year.

28 (e) The director shall establish procedures to identify the transfer or acquisition of a
29 business for purposes of this section.

30 (f) For purposes of this chapter:

31 (1) "Person" shall include an individual, a trust, estate, partnership, association, company
32 or corporation; and

33 (2) "Trade or business" shall include the employer's workforce.

34 (g) This section shall be interpreted and applied in such a manner as to meet the

1 minimum requirements contained in any guidance or regulations issued by the United States
2 Department of Labor.

3 (h) Any determination of the director under this section shall be final unless an appeal
4 from it is filed by the aggrieved party within fifteen (15) days from the date that notice is mailed
5 to the last known address of that party. All appeals shall follow the provisions of section 28-43-
6 13.

7 SECTION 3. Sections 28-44-17, 28-44-18 and 28-44-20 of the General Laws in Chapter
8 28-44 entitled "Employment Security - Benefits" are hereby amended to read as follows:

9 **28-44-17. Voluntary leaving without good cause.** -- (a) For benefit years beginning
10 prior to July 1, 2012, an individual who leaves work voluntarily without good cause shall be
11 ineligible for waiting period credit or benefits for the week in which the voluntary quit occurred
12 and until he or she establishes to the satisfaction of the director that he or she has subsequent to
13 that leaving had at least eight (8) weeks of work, and in each of those eight (8) weeks has had
14 earnings of at least twenty (20) times the minimum hourly wage as defined in chapter 12 of this
15 title for performing services in employment for one or more employers subject to chapters 42 --
16 44 of this title. For benefit years beginning on or after July 1, 2012 [and prior to July 6, 2014](#), an
17 individual who leaves work voluntarily without good cause shall be ineligible for waiting period
18 credit or benefits for the week in which the voluntary quit occurred and until he or she establishes
19 to the satisfaction of the director that he or she has subsequent to that leaving had at least eight (8)
20 weeks of work, and in each of those eight (8) weeks has had earnings greater than or equal to his
21 or her weekly benefit rate for performing services in employment for one or more employers
22 subject to chapters 42 -- 44 of this title. [For benefit years beginning on or after July 6, 2014, an
23 individual who leaves work voluntarily without good cause shall be ineligible for waiting period
24 credit or benefits for the week in which the voluntary quit occurred and until he or she establishes
25 to the satisfaction of the director that he or she has, subsequent to that leaving, had earnings
26 greater than or equal to eight \(8\) times his or her weekly benefit rate for performing services in
27 employment for one or more employers subject to chapters 42 – 44 of this title.](#) For the purposes
28 of this section, "voluntarily leaving work with good cause" shall include:

29 (1) sexual harassment against members of either sex;

30 (2) voluntarily leaving work with an employer to accompany, join or follow his or her
31 spouse to a place, due to a change in location of the spouse's employment, from which it is
32 impractical for such individual to commute; and

33 (3) the need to take care for a member of the individual's immediate family due to illness
34 or disability as defined by the Secretary of Labor; provided that the individual shall not be

1 eligible for waiting period credit or benefits until he or she is able to work and is available for
2 work. For the purposes of this provision, the following terms apply:

3 (i) "immediate family member" means a spouse, parents, mother-in-law, father-in-law
4 and children under the age of eighteen (18);

5 (ii) "illness" means a verified illness which necessitates the care of the ill person for a
6 period of time longer than the employer is willing to grant leave, paid or otherwise; and

7 (iii) "disability" means all types of verified disabilities, including mental and physical
8 disabilities, permanent and temporary disabilities, and partial and total disabilities.

9 (b) For the purposes of this section, "voluntarily leaving work without good cause" shall
10 include voluntarily leaving work with an employer to accompany, join or follow his or her spouse
11 in a new locality in connection with the retirement of his or her spouse, or failure by a temporary
12 employee to contact the temporary help agency upon completion of the most recent work
13 assignment to seek additional work unless good cause is shown for that failure; provided, that the
14 temporary help agency gave written notice to the individual that the individual is required to
15 contact the temporary help agency at the completion of the most recent work assignment to seek
16 additional work.

17 **28-44-18. Discharge for misconduct.** -- For benefit years beginning prior to July 1,
18 2012, an individual who has been discharged for proved misconduct connected with his or her
19 work shall become ineligible for waiting period credit or benefits for the week in which that
20 discharge occurred and until he or she establishes to the satisfaction of the director that he or she
21 has, subsequent to that discharge, had at least eight (8) weeks of work, and in each of that eight
22 (8) weeks has had earnings of at least twenty (20) times the minimum hourly wage as defined in
23 chapter 12 of this title for performing services in employment for one or more employers subject
24 to chapters 42 -- 44 of this title. For benefit years beginning on or after July 1, 2012 [and prior to](#)
25 [July 6, 2014](#), an individual who has been discharged for proved misconduct connected with his or
26 her work shall become ineligible for waiting period credit or benefits for the week in which that
27 discharge occurred and until he or she establishes to the satisfaction of the director that he or she
28 has, subsequent to that discharge, had at least eight (8) weeks of work, and in each of that eight
29 (8) weeks has had earnings greater than or equal to his or her weekly benefit rate for performing
30 services in employment for one or more employers subject to chapters 42 -- 44 of this title. [For](#)
31 [benefit years beginning on or after July 6, 2014, an individual who has been discharged for](#)
32 [proved misconduct connected with his or her work shall become ineligible for waiting period](#)
33 [credit or benefits for the week in which that discharge occurred and until he or she establishes to](#)
34 [the satisfaction of the director that he or she has, subsequent to that discharge, had earnings](#)

1 [greater than or equal eight \(8\) times his or her weekly benefit rate for performing services in](#)
2 [employment for one or more employers subject to chapters 42 – 44 of this title.](#) Any individual
3 who is required to leave his or her work pursuant to a plan, system, or program, public or private,
4 providing for retirement, and who is otherwise eligible, shall under no circumstances be deemed
5 to have been discharged for misconduct. If an individual is discharged and a complaint is issued
6 by the regional office of the National Labor Relations board or the state labor relations board that
7 an unfair labor practice has occurred in relation to the discharge, the individual shall be entitled to
8 benefits if otherwise eligible. For the purposes of this section, "misconduct" is defined as
9 deliberate conduct in willful disregard of the employer's interest, or a knowing violation of a
10 reasonable and uniformly enforced rule or policy of the employer, provided that such violation is
11 not shown to be as a result of the employee's incompetence. Notwithstanding any other provisions
12 of chapters 42 -- 44 of this title, this section shall be construed in a manner that is fair and
13 reasonable to both the employer and the employed worker.

14 **28-44-20. Refusal of suitable work.** -- (a) For benefit years beginning prior to July 1,
15 2012, if an otherwise eligible individual fails, without good cause, either to apply for suitable
16 work when notified by the employment office, or to accept suitable work when offered to him or
17 her, he or she shall become ineligible for waiting period credit or benefits for the week in which
18 that failure occurred and until he or she establishes to the satisfaction of the director that he or she
19 has, subsequent to that failure, had at least eight (8) weeks of work and in each of those eight (8)
20 weeks has had earnings of at least twenty (20) times the minimum hourly wage, as defined in
21 chapter 12 for performing services in employment for one or more employers subject to chapters
22 42 -- 44 of this title. For benefit years beginning on or after July 1, 2012 [and prior to July 6, 2014,](#)
23 if an otherwise eligible individual fails, without good cause, either to apply for suitable work
24 when notified by the employment office, or to accept suitable work when offered to him or her,
25 he or she shall become ineligible for waiting period credit or benefits for the week in which that
26 failure occurred and until he or she establishes to the satisfaction of the director that he or she has,
27 subsequent to that failure, had at least eight (8) weeks of work and in each of those eight (8)
28 weeks has had earnings greater than or equal to his or her weekly benefit rate for performing
29 services in employment for one or more employers subject to chapters 42 -- 44 of this title.

30 [For benefit years beginning on or after July 6, 2014, if an otherwise eligible individual](#)
31 [fails, without good cause, either to apply for suitable work when notified by the employment](#)
32 [office, or to accept suitable work when offered to him or her, he or she shall become ineligible for](#)
33 [waiting period credit or benefits for the week in which that failure occurred and until he or she](#)
34 [establishes to the satisfaction of the director that he or she has, subsequent to that failure, had](#)

1 [earnings greater than or equal to eight \(8\) times his or her weekly benefit rate for performing](#)
2 [services in employment for one or more employers subject to chapters 42 – 44 of this title.](#)

3 (b) "Suitable work" means any work for which the individual in question is reasonably
4 fitted, which is located within a reasonable distance of his or her residence or last place of work
5 and which is not detrimental to his or her health, safety, or morals. No work shall be deemed
6 suitable, and benefits shall not be denied under chapters 42 -- 44 of this title to any otherwise
7 eligible individual for refusing to accept new work, under any of the following conditions:

8 (1) If the position offered is vacant due directly to a strike, lockout, or other labor
9 dispute;

10 (2) If the wages, hours, or other conditions of the work are substantially less favorable to
11 the employee than those prevailing for similar work in the locality;

12 (3) If, as a condition of being employed, the individual would be required to join a
13 company union or to resign from or refrain from joining any bona fide labor organization.

14 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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

1 This act would amend the definitions of "credit amount" and "credit week" for purposes
2 of calculating an individual's earned wages and would indicate that certain services performed by
3 family members not be considered employment and would further require certain individuals to
4 satisfy conditions prior to obtaining waiting period credits under this chapter.

5 This act would take effect upon passage.

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LC004205
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