

2016 -- H 7631

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION  
BENEFITS - DISFIGUREMENT

Introduced By: Representatives Winfield, and Ucci

Date Introduced: February 12, 2016

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-33-19 of the General Laws in Chapter 28-33 entitled "Workers'  
2 Compensation - Benefits" is hereby amended to read as follows:

3 **28-33-19. Additional compensation for specific injuries.** -- (a) (1) In case of the  
4 following specified injuries there shall be paid in addition to all other compensation provided for  
5 in chapters 29 to 38 of this title a weekly payment equal to one-half (1/2) of the average weekly  
6 earnings of the injured employee, but in no case more than ninety dollars (\$90.00) nor less than  
7 forty-five dollars (\$45.00) per week. In case of the following specified injuries that occur on or  
8 after January 1, 2012, there shall be paid in addition to all other compensation provided for in  
9 chapters 29 to 38 of this title a weekly payment equal to one-half (1/2) of the average weekly  
10 earnings of the injured employee, but in no case more than one hundred eighty dollars (\$180) nor  
11 less than ninety dollars (\$90.00) per week. Payment made under this section shall be made in a  
12 one time payment unless the parties otherwise agree. Payment shall be mailed within fourteen  
13 (14) days of the entry of a decree, order, or agreement of the parties:

14 (i) For the loss by severance of both hands at or above the wrist, or for the loss of the  
15 arm at or above the elbow or for the loss of the leg at or above the knee, or both feet at or above  
16 the ankle, or of one hand and one foot, or the entire and irrecoverable loss of the sight of both  
17 eyes, or the reduction to one-tenth ( 1/10) or less of normal vision with glasses, for a period of  
18 three hundred twelve (312) weeks; provided, that for the purpose of this chapter the Snellen chart

1 reading ( 20/200) shall equal one-tenth ( 1/10) of normal vision or a reduction of ninety percent  
2 (90%) of the vision. Additionally, any loss of visual performance including, but not limited to,  
3 loss of binocular vision, other than direct visual acuity may be considered in evaluating eye loss;

4 (ii) For the loss by severance of either arm at or above the elbow, or of either leg at or  
5 above the knee, for a period of three hundred twelve (312) weeks;

6 (iii) For the loss by severance of either hand at or above the wrist for a period of two  
7 hundred forty-four (244) weeks;

8 (iv) For the entire and irrecoverable loss of sight of either eye, or the reduction to one-  
9 tenth ( 1/10) or less of normal vision with glasses, or for loss of binocular vision for a period of  
10 one hundred sixty (160) weeks;

11 (v) For the loss by severance of either foot at or above the ankle, for a period of two  
12 hundred five (205) weeks;

13 (vi) For the loss by severance of the entire distal phalange of either thumb for a period of  
14 thirty-five (35) weeks; and for the loss by severance at or above the second joint of either thumb,  
15 for a period of seventy-five (75) weeks;

16 (vii) For the loss by severance of one phalange of either index finger, for a period of  
17 twenty-five (25) weeks; for the loss by severance of at least two (2) phalanges of either index  
18 finger, for a period of thirty-two (32) weeks; for the loss by severance of at least three (3)  
19 phalanges of either index finger, for a period of forty-six (46) weeks;

20 (viii) For the loss by severance of one phalange of the second finger of either hand, for a  
21 period of sixteen (16) weeks; for the loss by severance of two (2) phalanges of the second finger  
22 of either hand, for a period of twenty-two (22) weeks; for the loss by severance of three (3)  
23 phalanges of the second finger on either hand, for a period of thirty (30) weeks;

24 (ix) For the loss by severance of one phalange of the third finger of either hand, for a  
25 period of twelve (12) weeks; for the loss by severance of two (2) phalanges of the third finger of  
26 either hand, for a period of eighteen (18) weeks; for the loss by severance of three (3) phalanges  
27 of a third finger of either hand, for a period of twenty-five (25) weeks;

28 (x) For the loss by severance of one phalange of the fourth finger of either hand, for a  
29 period of ten (10) weeks; for the loss by severance of two (2) phalanges of the fourth finger of  
30 either hand, for a period of fourteen (14) weeks; for the loss by severance of three (3) phalanges  
31 of a fourth finger of either hand, for a period of twenty (20) weeks;

32 (xi) For the loss by severance of one phalange of the big toe on either foot, for a period  
33 of twenty (20) weeks; for the loss by severance of two (2) phalanges of the big toe of either foot,  
34 for a period of thirty-eight (38) weeks; for the loss by severance at or above the distal joint of any

1 other toe than the big toe, for a period of ten (10) weeks for each such toe;

2 (xii) For partial loss by severance for any of the injuries specified in paragraphs (1)(i) --  
3 (1)(xi) of this subsection, proportionate benefits shall be paid for the period of time that the  
4 partial loss by severance bears to the total loss by severance.

5 (2) Where any bodily member or portion of it has been rendered permanently stiff or  
6 useless, compensation in accordance with the above schedule shall be paid as if the member or  
7 portion of it had been completely severed; provided, that if the stiffness or uselessness is less than  
8 total, then compensation shall be paid for that period of weeks in proportion to the applicable  
9 period where the member or portion of it has been completely severed as the instant percentage of  
10 stiffness or uselessness bears to the total stiffness or total uselessness of the bodily members or  
11 portion of them.

12 (3) In case of the following specified injuries there shall be paid in addition to all other  
13 compensation provided for in chapters 29 -- 38 under this title a weekly payment equal to one-  
14 half ( 1/2) of the average weekly earnings of the injured employee, but in no case more than  
15 ninety dollars (\$90.00) nor less than forty-five dollars (\$45.00) per week. Payment under this  
16 subsection shall be made in a one time payment unless the parties otherwise agree. Payment shall  
17 be mailed within fourteen (14) days of the entry of a decree, order, or agreement of the parties:

18 (i) For permanent disfigurement of the body the number of weeks may not exceed five  
19 hundred (500) weeks, which sum shall be payable in a one time payment within fourteen (14)  
20 days of the entry of a decree, order, or agreement of the parties in addition to all other sums under  
21 this section wherever it is applicable. Provided, however, that in no case should an award of  
22 benefits be payable under this section for scarring to parts of the body not generally seen in  
23 public, such as body parts other than the neck, face, and hands. Provided, further, that in no case  
24 shall any award of benefits be payable under this section until at least one year has passed from  
25 the disfiguring event, whether injury or surgery or other type of occurrence.

26 (4) (i) Loss of hearing due to industrial noise is recognized as an occupational disease for  
27 purposes of chapters 29 -- 38 of this title and occupational deafness is defined to be a loss of  
28 hearing in one or both ears due to prolonged exposure to harmful noise in employment. Harmful  
29 noise means sound capable of producing occupational deafness.

30 (ii) Hearing loss shall be evaluated pursuant to protocols established by the workers'  
31 compensation medical advisory board. All treatment consistent with this subsection shall be  
32 consistent with the protocols established by the workers' compensation medical advisory board  
33 subject to § 28-33-5.

34 (iii) If the employer has conducted baseline screenings within one (1) year of exposure to

1 harmful noise to evaluate the extent of an employee's pre-existing hearing loss, the causative  
2 factor shall be apportioned based on the employee's pre-existing hearing loss and subsequent  
3 occupational hearing loss, and the compensation payable to the employee shall only be that  
4 portion of the compensation related to the present work-related exposure.

5 (iv) There shall be payable as permanent partial disability for total occupational deafness  
6 of one ear, seventy-five (75) weeks of compensation; for total occupational deafness of both ears,  
7 two hundred forty-four (244) weeks of compensation; for partial occupational deafness in one or  
8 both ears, compensation shall be paid for any periods that are proportionate to the relation which  
9 the hearing loss bears to the amount provided in this subdivision for total loss of hearing in one or  
10 both ears, as the case may be. For the complete loss of hearing for either ear due to external  
11 trauma or by other mechanism, acuity loss shall be paid pursuant to this subsection.

12 (v) No benefits shall be granted for tinnitus, psychogenic hearing loss, congenital  
13 hearing loss, recruitment or hearing loss above three thousand (3,000) hertz.

14 (vi) The provisions of this subsection and the amendments insofar as applicable to  
15 hearing loss shall be operative as to any occupational hearing loss that occurs on or after  
16 September 1, 2003, except for acuity hearing loss related to a single event which shall become  
17 effective upon passage.

18 (vii) If previous hearing loss, whether occupational or not, is established by an  
19 audiometric examination or other competent evidence, whether or not the employee was exposed  
20 to assessable noise exposure within one year preceding the test, the employer is not liable for the  
21 previous loss, nor is the employer liable for a loss for which compensation has previously been  
22 paid or awarded. The employer is liable only for the difference between the percent of  
23 occupational hearing loss determined as of the date of the audiometric examination conducted by  
24 a certified audiometric technician using an audiometer which meets the specifications established  
25 by the American National Standards Institute (ANSI 3.6-1969, ri973) used to determine  
26 occupational hearing loss and the percentage of loss established by the baseline audiometric  
27 examination. An amount paid to an employee for occupational hearing loss by any other  
28 employer shall be credited against compensation payable by the subject employer for the hearing  
29 loss. The employee shall not receive in the aggregate greater compensation from all employers  
30 for occupational hearing loss than that provided in this section for total occupational hearing loss.  
31 A payment shall not be paid to an employee unless the employee has worked in excessive noise  
32 exposure employment for a total period of at least one hundred eighty (180) days for the  
33 employer for whom compensation is claimed.

34 (viii) No claim for occupational deafness may be filed until six (6) months separation

1 from the type of noisy work for the last employer in whose employment the employee was at any  
2 time during the employment exposed to harmful noise.

3 (ix) The total compensation due for hearing loss is recovered from the employer who last  
4 employed the employee in whose employment the employee was last exposed to harmful noise  
5 and the insurance carrier, if any, on the risk when the employee was last so exposed, and if the  
6 occupational hearing loss was contracted while the employee was in the employment of a prior  
7 employer, and there was no baseline testing by the last employer, the employer and insurance  
8 carrier which is made liable for the total compensation as provided by this section may petition  
9 the worker's compensation court for an apportionment of the compensation among the several  
10 employers which since the contraction of the hearing loss have employed the employee in a noisy  
11 environment.

12 (b) Where payments are required to be made under more than one clause of this section,  
13 payments shall be made in a one time payment unless the parties otherwise agree. Payment shall  
14 be mailed within fourteen (14) days of the entry of a decree, order, or agreement of the parties.

15 (c) Payments pursuant to this section, except paragraph (a)(3)(ii) of this section, shall be  
16 made only after an employee's condition as relates to loss of use has reached maximum medical  
17 improvement as defined in § 28-29-2(8) and as found pursuant to § 28-33-18(b).

18 SECTION 2. 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 - WORKERS' COMPENSATION  
BENEFITS - DISFIGUREMENT

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1           This act would restrict the awarding of disfigurement workers' compensation benefits to  
2 scarring of the neck, face, and hands and prohibits them from being awarded less than one year  
3 from the date of the disfiguring event.

4           This act would take effect upon passage.

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