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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

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

Introduced By: Senator P Fogarty

Date Introduced: May 25, 2017

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-33-18.3 of the General Laws in Chapter 28-33 entitled
2 "Workers' Compensation - Benefits" is hereby amended to read as follows:

3 **28-33-18.3. Continuation of benefits -- Partial incapacity.**

4 (a) (1) For all injuries occurring on or after September 1, 1990, in those cases where the
5 employee has received a notice of intention to terminate partial-incapacity benefits pursuant to §
6 28-33-18, the employee, or his or her duly authorized representative, may file with the workers'
7 compensation court a petition for continuation of benefits on forms prescribed by the workers'
8 compensation court. In any proceeding before the workers' compensation court on a petition for
9 continuation of partial-incapacity benefits, where the employee demonstrates by a fair
10 preponderance of the evidence that his or her partial incapacity poses a material hindrance to
11 obtaining employment suitable to his or her limitation, partial-incapacity benefits shall continue.
12 ~~For injuries on and after July 1, 2023, "material hindrance" is defined to include only~~
13 ~~compensable injuries causing a greater than sixty five percent (65%) degree of functional~~
14 ~~impairment and/or disability.~~ Any period of time for which the employee has received benefits
15 for total incapacity shall not be included in the calculation of the three hundred and twelve-week
16 (312) period.

17 (2) ~~The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1,~~
18 ~~2023.~~

1 (b) (1) Where any employee's incapacity is partial and has extended for more than three
2 hundred and twelve (312) weeks and the employee has proved an entitlement to continued
3 benefits under subsection (a), payments made to these incapacitated employees shall be increased
4 annually on the tenth (10th) day of May thereafter so long as the employee remains incapacitated.
5 The increase shall be by an amount equal to the total percentage increase in the annual Consumer
6 Price Index, United States City Average for Urban Wage Earners and Clerical Workers, as
7 formulated and computed by the Bureau of Labor Statistics of the United States Department of
8 Labor for the period of March 1 to February 28 each year.

9 (2) "Index", as used in this section, refers to the Consumer Price Index, United States
10 City Average for Urban Wage Earners and Clerical Workers, as that index was formulated and
11 computed by the Bureau of Labor Statistics of the United States Department of Labor.

12 (3) The annual increase shall be based upon the percentage increase, if any, in the
13 Consumer Price Index for the month of a given year, over the index for February the previous
14 year. Thereafter, increases shall be made on May 10 annually, based upon the percentage
15 increase, if any, in the Consumer Price Index for the period of March 1 to February 28.

16 (4) The computations in this section shall be made by the director of labor and training
17 and promulgated to insurers and employers making payments required by this section. Increases
18 shall be paid by insurers and employers without further order of the court. If payment payable
19 under this section is not mailed within fourteen (14) days after the employer or insurer has been
20 notified by publication in a newspaper of general circulation in the state it becomes due, there
21 shall be added to the unpaid payment an amount equal to twenty percent (20%) of it, to be paid at
22 the same time as, but in addition to, the payment.

23 (5) This section applies only to payment of weekly indemnity benefits to employees as
24 described in subdivision (b)(1) and does not apply to specific compensation payments for loss of
25 use or disfigurement or payment of dependency benefits or any other benefits payable under the
26 workers' compensation act.

27 (c) No petitions for commutation shall be allowed or entertained in those cases where an
28 employee is receiving benefits pursuant to this section.

29 SECTION 2. Sections 28-53-2 and 28-53-7 of the General Laws in Chapter 28-53
30 entitled "Rhode Island Uninsured Employers Fund" are hereby amended to read as follows:

31 **28-53-2. Establishment -- Sources -- Administration.**

32 (a) There shall be established within the department of labor and training a special
33 restricted receipt account to be known as the Rhode Island uninsured employers fund. The fund
34 shall be capitalized from excise taxes assessed against uninsured employers pursuant to the

1 provisions of § 28-53-9 of this chapter and from general revenues appropriated by the legislature.
2 Beginning in state fiscal year ending ~~June 30, 2017~~ June 30, 2018, the legislature may appropriate
3 up to two million dollars (\$2,000,000) in general revenue funds annually for deposit into the
4 Rhode Island uninsured employers fund.

5 (b) All moneys in the fund shall be mingled and undivided. The fund shall be
6 administered by the director of the department of labor and training, or his or her designee, but in
7 no case shall the director incur any liability beyond the amounts paid into and earned by the fund.

8 (c) All amounts owed to the uninsured employers fund from illegally uninsured
9 employers are intended to be excise taxes and as such, all ambiguities and uncertainties are to be
10 resolved in favor of a determination that such assessments are excise taxes.

11 **28-53-7. Payments to employees of uninsured employers.**

12 (a) Where it is determined that the employee was injured in the course of employment
13 while working for an employer who fails to maintain a policy of workers' compensation insurance
14 as required by § 28-36-1 et seq., the uninsured employers fund shall pay the benefits to which the
15 injured employee would be entitled pursuant to chapters 29 to 38 of this title subject to the
16 limitations set forth herein.

17 (b) The workers' compensation court shall hear all petitions for payment from the fund
18 pursuant to § 28-30-1 et seq.; provided, however, that the uninsured employers fund and the
19 employer shall be named as parties to any petition seeking payment of benefits from the fund.

20 (c) Where an employee is deemed to be entitled to benefits from the uninsured employers
21 fund, the fund shall pay benefits for disability and medical expenses as provided pursuant to
22 chapters 29 to 38 of this title except that the employee shall not be entitled to receive benefits for
23 loss of function and disfigurement pursuant to the provisions of § 28-33-19.

24 (d) The fund shall pay cost, counsel, and witness fees, as provided in § 28-35-32, to any
25 employee who successfully prosecutes any petitions for compensation; petitions for medical
26 expenses; petitions to amend a pretrial order or memorandum of agreement; and all other
27 employee petitions; and to employees who successfully defend, in whole or in part, proceedings
28 seeking to reduce or terminate any and all workers' compensation benefits; provided, however,
29 that the attorney's fees awarded to counsel who represent the employee in petitions for lump-sum
30 commutation filed pursuant to § 28-33-25, or in the settlement of disputed cases pursuant to § 28-
31 33-25.1, shall be limited to the maximum amount paid to counsel who serve as court-appointed
32 attorneys in workers' compensation proceedings as established by rule or order of the Rhode
33 Island supreme court.

34 (e) In the event that the uninsured employer makes payment of any monies to the

1 employee to compensate the employee for lost wages or medical expenses, the fund shall be
2 entitled to a credit for all such monies received by, or on behalf of, the employee against any
3 future benefits payable directly to the employee.

4 (f) This section shall apply to injuries that occur on or after ~~July 1, 2017~~ [July 1, 2018](#).

5 SECTION 3. The title of Chapter 28-38 of the General Laws entitled "Dr. John E. Donley
6 Rehabilitation Center" is hereby amended to read as follows:

7 ~~CHAPTER 28-38~~

8 ~~Dr. John E. Donley Rehabilitation Center~~

9 [CHAPTER 28-38](#)

10 [CHIEF JUDGE ROBERT F. ARRIGAN REHABILITATION CENTER](#)

11 SECTION 4. Sections 28-38-23 and 28-38-24 of the General Laws in Chapter 28-38
12 entitled "Dr. John E. Donley Rehabilitation Center" are hereby amended to read as follows:

13 **28-38-23. Name change.**

14 The name of the curative centre in the department shall be the ~~Dr. John E. Donley~~ [Chief](#)
15 [Judge Robert F. Arrigan](#) rehabilitation center.

16 **28-38-24. Reference to curative centre.**

17 Wherever in any existing law reference is made to the curative centre, and wherever in an
18 existing law the term "state curative centre" or "curative centre" or "the centre," ["the Donley](#)
19 [Center"](#) or ["the Dr. John E. Donley Rehabilitation Center"](#), as variously used, refers to the
20 curative centre in the department, that reference and that term shall be deemed to have reference
21 to the ~~Dr. John E. Donley~~ [Chief Judge Robert F. Arrigan](#) rehabilitation center.

22 SECTION 5. Section 36-10-14 of the General Laws in Chapter 36-10 entitled
23 "Retirement System-Contributions and Benefits" is hereby amended to read as follows:

24 **36-10-14. Retirement for accidental disability.**

25 (a) Medical examination of an active member for accidental disability and investigation
26 of all statements and certificates by him or her or in his or her behalf in connection therewith shall
27 be made upon the application of the head of the department in which the member is employed or
28 upon application of the member, or of a person acting in his or her behalf, stating that the member
29 is physically or mentally incapacitated for the performance of service as a natural and proximate
30 result of an accident while in the performance of duty, and certify the definite time, place, and
31 conditions of the duty performed by the member resulting in the alleged disability, and that the
32 alleged disability is not the result of willful negligence or misconduct on the part of the member,
33 and is not the result of age or length of service, and that the member should, therefore, be retired.

34 (b) The application shall be made within five (5) years of the alleged accident from which

1 the injury has resulted in the members present disability and shall be accompanied by an accident
2 report and a physicians report certifying to the disability; provided that if the member was able to
3 return to his or her employment and subsequently reinjures or aggravates the same injury, the
4 application shall be made within the later of five (5) years of the alleged accident or three (3)
5 years of the reinjury or aggravation. The application may also state the member is permanently
6 and totally disabled from any employment.

7 (c) If a medical examination conducted by three (3) physicians engaged by the retirement
8 board and such investigation as the retirement board may desire to make shall show that the
9 member is physically or mentally incapacitated for the performance of service as a natural and
10 proximate result of an accident, while in the performance of duty, and that the disability is not the
11 result of willful negligence or misconduct on the part of the member, and is not the result of age
12 or length of service, and that the member has not attained the age of sixty-five (65), and that the
13 member should be retired, the physicians who conducted the examination shall so certify to the
14 retirement board stating the time, place, and conditions of service performed by the member
15 resulting in the disability and the retirement board may grant the member an accidental disability
16 benefit.

17 (d) The retirement board shall establish uniform eligibility requirements, standards, and
18 criteria for accidental disability which shall apply to all members who make application for
19 accidental disability benefits.

20 (e) In the event that any party is aggrieved by the determination of the retirement board
21 pursuant to §45-19-1, for an injury occurring on or after July 1, 2011, the party may submit an
22 appeal to the Rhode Island workers' compensation court. The appellant shall file a notice of
23 appeal with the retirement board and with the workers' compensation court within twenty (20)
24 days of the entry of the retirement board's decision and shall serve a copy of the notice of appeal
25 upon the opposing party.

26 (f) Within twenty (20) days of the receipt of the notice of appeal, the retirement board
27 shall transmit the entire record of proceedings before it, together with its order, to the workers'
28 compensation court.

29 (g) In the event that a party files a notice of appeal to the workers' compensation court,
30 the order of the retirement board shall be stayed pending further action by the court pursuant to
31 the provisions of §28-35-20.

32 (h) Upon receipt of the notice of appeal, the court shall assign the matter to a judge and
33 shall issue a notice at the time advising the parties of the judge to whom the case has been
34 assigned and the date for pretrial conference in accordance with §28-35-20.

1 (i) All proceedings filed with the workers' compensation court pursuant to this section
2 shall be de novo and shall be subject to the provisions of chapters 29 through 38 of title 28 ("labor
3 and labor relations") for all case management procedures and dispute resolution processes, as
4 provided under the rules of the workers' compensation court. The workers' compensation court
5 shall enter a pretrial order in accordance with §28-35-20(c) which grants or denies, in whole or in
6 part, the relief sought by the petitioner. The pretrial order shall be effective upon entry and any
7 payments ordered by it shall be paid within fourteen (14) days of the entry of the order. Provided,
8 however, that in the event that the retirement board files a claim for trial of the pretrial order
9 entered by the court, the order of the court shall be stayed until a final order or decree is entered
10 by the court. If after trial and the entry of a final decree, the court sustains the findings and orders
11 entered in the pretrial order, the retirement board shall reimburse the municipality all benefits
12 paid by it from the time the pretrial order was entered until the time the final decree is entered by
13 the court. Where the matter has been heard and decided by the workers' compensation court, the
14 court shall retain jurisdiction to review any prior orders or decrees entered by it. Such petitions to
15 review shall be filed directly with the workers' compensation court and shall be subject to the
16 case management and dispute resolution procedures set forth in chapters 29 through 38 of title 28.

17 SECTION 6. 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

1 This act would repeal the provisions of the workers' compensation law that provides that
2 for injuries on and after July 1, 2023, "material hindrance" is defined to include only
3 compensable injuries causing a greater than sixty-five percent (65%) degree of functional
4 impairment and/or disability. The act would also change the name of the Donley Center to the
5 Chief Judge Robert F. Arrigan rehabilitation center. The act also would provide for an appeal of
6 certain retirement board decisions to the workers' compensation court.

7 This act would take effect upon passage.

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