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LC002044

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - TEMPORARY DISABILITY
BENEFITS AND CONTRIBUTIONS

Introduced By: Representatives Azzinaro, Corvese, Costantino, Solomon, and Phillips

Date Introduced: March 08, 2019

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-39-2 of the General Laws in Chapter 28-39 entitled "Temporary
2 Disability Insurance - General Provisions" is hereby amended to read as follows:

3 **28-39-2. Definitions.**

4 The following words and phrases, as used in chapters 39 -- 41 of this title, have the
5 following meanings unless the context clearly requires otherwise:

6 (1) "Average weekly wage" means the amount determined by dividing the individual's
7 total wages [including any sales commission](#) earned for services performed in employment within
8 his or her base period by the number of that individual's credit weeks within the base period;

9 (2) "Base period" with respect to an individual's benefit year when the benefit year begins
10 on or after October 7, 1990, means the first four (4) of the most recently completed five (5)
11 calendar quarters immediately preceding the first day of an individual's benefit year; provided,
12 that for any individual's benefit year when the benefit year begins on or after October 4, 1992,
13 and for any individual deemed monetarily ineligible for benefits under the "base period" as
14 defined in this subdivision, the department shall make a re-determination of entitlement based
15 upon an alternate base period which consists of the last four (4) completed calendar quarters
16 immediately preceding the first day of the claimant's benefit year. Notwithstanding anything
17 contained to the contrary in this subdivision, the base period shall not include any calendar
18 quarter previously used to establish a valid claim for benefits; provided, however, that the "base

1 period" with respect to members of the United States military service, the Rhode Island National
2 Guard, or a United States military reserve force, and who served in a United States declared
3 combat operation during their military service, who file a claim for benefits following their
4 release from their state or federal active military service and who are deemed to be monetarily
5 ineligible for benefits under this section, shall mean the first four (4) of the most recently
6 completed five (5) calendar quarters immediately preceding the first day the individual was called
7 into that state or federal active military service; provided, that for any individual deemed
8 monetarily ineligible for benefits under the "base period" as defined in this section, the
9 department shall make a re-determination of entitlement based upon an alternative base period
10 which consists of the last four (4) completed calendar quarters immediately preceding the first
11 day the claimant was called into that state or federal active military service. Notwithstanding any
12 provision of this section of the general or public laws to the contrary, the base period shall not
13 include any calendar quarter previously used to establish a valid claim for benefits;

14 (3) "Benefit" means the money payable, as provided in chapters 39 -- 41 of this title, to
15 an individual as compensation for his or her unemployment caused by sickness;

16 (4) "Benefit credits" means the total amount of money payable to an individual as
17 benefits, as provided in § 28-41-7;

18 (5) "Benefit rate" means the money payable to an individual as compensation, as
19 provided in chapters 39 -- 41 of this title, for his or her wage losses with respect to any week
20 during which his or her unemployment is caused by sickness;

21 (6) "Benefit year" with respect to any individual who does not already have a benefit year
22 in effect, and who files a valid claim for benefits as of November 16, 1958 or any later date,
23 means fifty-two (52) consecutive calendar weeks, the first of which shall be the week containing
24 the day as of which he or she first files that valid claim in accordance with regulations adopted as
25 subsequently prescribed; provided, that for any benefit year beginning on or after October 7,
26 1990, the benefit year shall be fifty-three (53) consecutive calendar weeks if the subsequent filing
27 of a new valid claim immediately following the end of a previous benefit year would result in the
28 overlapping of any quarter of the base period of the prior new claim. In no event shall a new
29 benefit year begin prior to the Sunday next following the end of the old benefit year;

30 (i) For benefit years that begin on or after July 1, 2012, an individual's benefit year will
31 begin on the Sunday of the calendar week in which an individual first became unemployed due to
32 sickness and for which the individual has filed a valid claim for benefits;

33 (7) "Board" means the board of review as created under chapter 19 of title 42;

34 (8) "Calendar quarter" has the same definition as contained in chapter 42 of this title;

1 (9) "Credit week" means any week within an individual's base period in which that
2 individual earns wages amounting to at least twenty (20) times the minimum hourly wage as
3 defined in chapter 12 of this title, for performing services in employment for one or more
4 employers subject to chapters 39 -- 41 of this title;

5 (10) "Director" means the director of the department of labor and training;

6 (11) "Employee" means any person who is or has been employed by an employer subject
7 to chapters 39 -- 41 of this title and in employment subject to those chapters;

8 (12) "Employer" means any employing unit that is an employer under chapters 42 -- 44
9 of this title;

10 (13) "Employing unit" has the same definition as contained in chapter 42 of this title and
11 includes any governmental entity that elects to become subject to the provisions of chapters 39 --
12 41 of this title, in accordance with the provisions of §§ 28-39-3.1 and 28-39-3.2;

13 (14) "Employment" has the same definition as contained in chapter 42 of this title;

14 (15) "Employment office" has the same definition as contained in chapter 42 of this title;

15 (16) "Fund" means the Rhode Island temporary disability insurance fund established by
16 this chapter;

17 (17) "Partial unemployment due to sickness". For weeks beginning on or after January 1,
18 2006 an individual shall be deemed partially unemployed due to sickness in any week of less than
19 full-time work if he or she fails to earn in wages for services for that week an amount equal to the
20 weekly benefit rate for total unemployment due to sickness to which he or she would be entitled
21 if totally unemployed due to sickness and eligible.

22 (i) For the purposes of this subdivision and subdivision (22) of this section, "Wages"
23 includes only that part of remuneration for any work, which is in excess of one-fifth (1/5) of the
24 weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar
25 (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one
26 week, and "services" includes only that part of any work for which remuneration in excess of
27 one-fifth (1/5) of the weekly benefit rate for total unemployment, rounded to the next lower
28 multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed
29 and eligible in any one week is payable; provided, that nothing contained in this paragraph shall
30 permit any individual to whom remuneration is payable for any work performed in any week in
31 an amount equal to, or greater than, his or her weekly benefit rate to receive benefits under this
32 subdivision for that week.

33 (18) "Reserve fund" means the temporary disability insurance reserve fund established by
34 § 28-39-7;

1 (19) "Sales commissions" mean an extra amount of money that is paid to a sales person,
2 based upon the sales that they have generated, in addition to their wages and salary.

3 ~~(19)~~(20) "Services" means all endeavors undertaken by an individual that are paid for by
4 another or with respect to which the individual performing the services expects to receive wages
5 or profits;

6 ~~(20)~~(21) "Sickness". An individual shall be deemed to be sick in any week in which,
7 because of his or her physical or mental condition, including pregnancy, he or she is unemployed
8 and unable to perform his or her regular or customary work or services;

9 ~~(21)~~~~(i)~~(22)(i) "Taxes" means the money payments required by chapters 39 -- 41 of this
10 title, to be made to the temporary disability insurance fund or to the temporary disability
11 insurance reserve fund.

12 (ii) Wherever and whenever in chapters 39 -- 41 of this title, the words "contribution"
13 and/or "contributions" appear, those words shall be construed to mean the "taxes," as defined in
14 this subdivision, which are the money payments required by those chapters to be made to the
15 temporary disability insurance fund or to the temporary disability insurance reserve fund;

16 ~~(22)~~(23) "Wages" has the same definition as contained in chapter 42 of this title except
17 that it shall include "sales commissions" as defined herein; provided, that no individual shall be
18 denied benefits under chapters 39 -- 41 of this title because his or her employer continues to pay
19 to that individual his or her regular wages, or parts of them, while he or she is unemployed due to
20 sickness and unable to perform his or her regular or customary work or services. The amount of
21 any payments, whether or not under a plan or system, made to or on behalf of an employee by his
22 or her employer after the expiration of six (6) calendar months following the last calendar month
23 in which the employee performed actual bona fide personal services for his or her employer, shall
24 not be deemed to be wages either for the purpose of paying contributions thereon under chapter
25 40 of this title, or for the purpose of being used as a basis for paying benefits under chapter 41 of
26 this title; and

27 ~~(23)~~(24) "Week" has the same definition as contained in chapter 42 of this title.

28 SECTION 2. Section 28-40-1 of the General Laws in Chapter 28-40 entitled "Temporary
29 Disability Insurance - Contributions" is hereby amended to read as follows:

30 **28-40-1. Amount of employee contributions -- Wages on which based.**

31 (a) The taxable wage base under this chapter for each calendar year shall be equal to the
32 greater of thirty-eight thousand dollars (\$38,000) or the annual earnings needed by an individual
33 to qualify for the maximum weekly benefit amount and the maximum duration under chapters 39
34 -- 41 of this title. That taxable wage base shall be computed as follows: Every September 30, the

1 maximum weekly benefit amount in effect as of that date shall be multiplied by thirty (30) and
2 the resultant product shall be divided by thirty-six hundredths (.36). If the result thus obtained is
3 not an even multiple of one hundred dollars (\$100), it shall be rounded upward to the next higher
4 even multiple of one hundred dollars (\$100). That taxable wage base shall be effective for the
5 calendar year beginning on the next January 1.

6 (b) Each employee shall contribute with respect to employment after the date upon which
7 the employer becomes subject to chapters 39 -- 41 of this title, an amount equal to the fund cost
8 rate times the wages, including sales commissions, as defined in § 28-39-2 and paid by the
9 employer to the employee up to the taxable wage base as defined and computed in subsection (a)
10 of this section. The employee contribution rate for the following calendar year shall be
11 determined by computing the fund cost rate on or before November 15 of each year as follows:

12 (1) The total amount of disbursements made from the fund for the twelve (12) month
13 period ending on the immediately preceding September 30 shall be divided by the total taxable
14 wages paid by employers during the twelve (12) month period ending on the immediately
15 preceding June 30. The ratio thus obtained shall be multiplied by one hundred (100) and the
16 resultant product if not an exact multiple of one-tenth of one percent (0.1%) shall be rounded
17 down to the next lowest multiple of one-tenth of one percent (0.1%);

18 (2) If the fund balance as of the preceding September 30 is less than the total
19 disbursements from the fund for the six (6) month period ending on that September 30, that
20 difference shall be added to the total disbursements for the twelve (12) month period ending
21 September 30 for the purpose of computing the fund cost rate, and if the resulting fund cost rate is
22 not an exact multiple of one-tenth of one percent (0.1%) it shall be rounded to the nearest
23 multiple of one-tenth of one percent (0.1%).

24 SECTION 3. Section 28-41-2 of the General Laws in Chapter 28-41 entitled "Temporary
25 Disability Insurance - Benefits" is hereby amended to read as follows:

26 **28-41-2. Wages included for benefit purposes.**

27 Notwithstanding any provisions of chapters 39 -- 41 of this title to the contrary, "wages"
28 as used in the phrase "wages for employment from employers", including sales commissions, as
29 defined in § 28-39-2 and means, with reference to the benefits provisions of chapters 39 -- 41 of
30 this title, only those wages which are paid subsequent to the date upon which the employing unit,
31 by whom those wages were paid, has satisfied the conditions of § 28-39-2 (12) with respect to
32 becoming an employer subject to those chapters. No individual shall be denied benefits under
33 chapters 39 -- 41 of this title because his or her employer continued to pay to that individual his
34 or her regular wages, or parts of them, while he or she was sick and unable to perform his or her

1 regular or customary work or services. The amount of any payments, whether or not under a plan
2 or system, made to or on behalf of an employee by his or her employer after the expiration of six
3 (6) calendar months following the last calendar month in which the employee performed actual
4 bona fide personal services for that employer, shall not be deemed to be wages for the purpose of
5 being used as a basis for paying benefits under chapter 41 of this title.

6 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 - TEMPORARY DISABILITY
BENEFITS AND CONTRIBUTIONS

1 This act would require temporary disability contributions and benefits to be calculated
2 based upon an employee's wages and salaries, that shall also include any sales commissions
3 earned.

4 This act would take effect upon passage.

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