

2020 -- S 2576

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS

Introduced By: Senators Quezada, Metts, Crowley, Cano, and Goodwin

Date Introduced: February 25, 2020

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-12-2 of the General Laws in Chapter 28-12 entitled "Minimum
2 Wages" is hereby amended to read as follows:

3 **28-12-2. Definitions.**

4 As used in this chapter:

5 (1) "Advisory board" means a board created as provided in § 28-12-6;

6 (2) "Commissioner" means the minimum-wage commissioner appointed by the director
7 of labor and training as chief of the division of labor standards;

8 (3) "Director" means the director of labor and training, or his or her duly authorized
9 representative;

10 (4) "Employ" means to suffer or to permit to work;

11 (5) "Employee" ~~includes any individual suffered or permitted to work by an employer;~~
12 means any person providing labor or services for remuneration, as opposed to an independent
13 contractor, unless the hiring entity can establish that all of the following conditions are satisfied:

14 (i) The person is free from the control and direction of the hiring entity in connection
15 with the performance of the work, both under the contract for the performance of the work and in
16 fact;

17 (ii) The person performs work that is outside the usual course of the hiring entity's
18 business; and

19 (iii) The person is customarily engaged in an independently established trade, occupation,

1 [or business of the same nature as that involved in the work performed.](#)

2 (6) "Employee" shall not include:

3 (i) Any individual employed in domestic service or in or about a private home;

4 (ii) Any individual employed by the United States;

5 (iii) Any individual engaged in the activities of an educational, charitable, religious, or
6 nonprofit organization where the employer-employee relationship does not, in fact, exist, or
7 where the services rendered to the organizations are on a voluntary basis;

8 (iv) Newspaper deliverers on home delivery, shoe shiners in shoe shine establishments,
9 caddies on golf courses, pin persons in bowling alleys, ushers in theatres;

10 (v) Traveling salespersons or outside salespersons;

11 (vi) Service performed by an individual in the employ of his or her son, daughter, or
12 spouse and service performed by a child under the age of twenty-one (21) in the employ of his or
13 her father or mother;

14 (vii) Any individual employed between May 1 and October 1 in a resort establishment
15 that regularly serves meals to the general public and that is open for business not more than six
16 (6) months a year;

17 (viii) Any individual employed by an organized camp that does not operate for more than
18 seven (7) months in any calendar year. However, this exemption does not apply to individuals
19 employed by the camp on an annual, full-time basis. "Organized camp" means any camp, except
20 a trailer camp, having a structured program including, but not limited to, recreation, education,
21 and religious, or any combination of these.

22 (7) "Employer" includes any individual, partnership, association, corporation, business
23 trust, or any person, or group of persons, acting directly, or indirectly, in the interest of an
24 employer, in relation to an employee;

25 (8) "Occupation" means any occupation, service, trade, business, industry, or branch or
26 group of industries or employment or class of employment in which individuals are gainfully
27 employed;

28 (9) "Wage" means compensation due to an employee by reason of his or her employment.

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

31 **28-29-2. Definitions.**

32 In chapters 29 -- 38 of this title, unless the context otherwise requires:

33 (1) "Department" means the department of labor and training.

34 (2) "Director" means the director of labor and training or his or her designee unless

1 specifically stated otherwise.

2 (3)(i) "Earnings capacity" means the weekly straight time earnings which an employee
3 could receive if the employee accepted an actual offer of suitable alternative employment.
4 Earnings capacity can also be established by the court based on evidence of ability to earn,
5 including, but not limited to, a determination of the degree of functional impairment and/or
6 disability, that an employee is capable of employment. The court may, in its discretion, take into
7 consideration the performance of the employee's duty to actively seek employment in scheduling
8 the implementation of the reduction. The employer need not identify particular employment
9 before the court can direct an earnings capacity adjustment. In the event that an employee returns
10 to light duty employment while partially disabled, an earnings capacity shall not be set based
11 upon actual wages earned until the employee has successfully worked at light duty for a period of
12 at least thirteen (13) weeks.

13 (ii) As used under the provisions of this title, "functional impairment" means an
14 anatomical or functional abnormality existing after the date of maximum medical improvement as
15 determined by a medically or scientifically demonstrable finding and based upon the Sixth (6th)
16 edition of the American Medical Association's Guide to the Evaluation of Permanent Impairment
17 or comparable publications of the American Medical Association.

18 (iii) In the event that an employee returns to employment at an average weekly wage
19 equal to the employee's pre-injury earnings exclusive of overtime, the employee will be presumed
20 to have regained his/her earning capacity.

21 (4) "Employee" means any person who has entered into the employment of or works
22 under contract of service or apprenticeship with any employer, except that in the case of a city or
23 town other than the city of Providence it shall only mean that class or those classes of employees
24 as may be designated by a city, town, or regional school district in a manner provided in this
25 chapter to receive compensation under chapters 29 -- 38 of this title. It also means any person
26 providing labor or services for remuneration, as opposed to an independent contractor, unless the
27 hiring entity can establish that all of the following conditions are satisfied:

28 (i) The person is free from the control and direction of the hiring entity in connection
29 with the performance of the work, both under the contract for the performance of the work and in
30 fact;

31 (ii) The person performs work that is outside the usual course of the hiring entity's
32 business; and

33 (iii) The person is customarily engaged in an independently established trade, occupation,
34 or business of the same nature as that involved in the work performed. Any person employed by

1 the state of Rhode Island, except for sworn employees of the Rhode Island State Police, or by the
2 Rhode Island Airport Corporation who is otherwise entitled to the benefits of chapter 19 of title
3 45 shall be subject to the provisions of chapters 29 -- 38 of this title for all case management
4 procedures and dispute resolution for all benefits. The term "employee" does not include any
5 individual who is a shareholder or director in a corporation, general or limited partners in a
6 general partnership, a registered limited liability partnership, a limited partnership, or partners in
7 a registered limited liability limited partnership, or any individual who is a member in a limited
8 liability company. These exclusions do not apply to shareholders, directors and members who
9 have entered into the employment of or who work under a contract of service or apprenticeship
10 within a corporation or a limited liability company. The term "employee" also does not include a
11 sole proprietor, independent contractor, or a person whose employment is of a casual nature, and
12 who is employed other than for the purpose of the employer's trade or business, or a person
13 whose services are voluntary or who performs charitable acts, nor shall it include the members of
14 the regularly organized fire and police departments of any town or city except for appeals from an
15 order of the retirement board filed pursuant to the provisions of Rhode Island general law § 45-
16 21.2-9; provided, however, that it shall include the members of the police and aircraft rescue and
17 firefighting (ARFF) units of the Rhode Island Airport Corporation. Whenever a contractor has
18 contracted with the state, a city, town, or regional school district any person employed by that
19 contractor in work under contract shall not be deemed an employee of the state, city, town, or
20 regional school district as the case may be. Any person who on or after January 1, 1999, was an
21 employee and became a corporate officer shall remain an employee, for purposes of these
22 chapters, unless and until coverage under this act is waived pursuant to subsection 28-29-8(b) or §
23 28-29-17. Any person who is appointed a corporate officer between January 1, 1999 and
24 December 31, 2001, and was not previously an employee of the corporation, will not be
25 considered an employee, for purposes of these chapters, unless that corporate officer has filed a
26 notice pursuant to § 28-29-19(c). In the case of a person whose services are voluntary or who
27 performs charitable acts, any benefit received, in the form of monetary remuneration or
28 otherwise, shall be reportable to the appropriate taxation authority but shall not be deemed to be
29 wages earned under contract of hire for purposes of qualifying for benefits under chapters 29 --
30 38 of this title. Any reference to an employee who had been injured shall, where the employee is
31 dead, include a reference to his or her dependents as defined in this section, or to his or her legal
32 representatives, or, where he or she is a minor or incompetent, to his or her conservator or
33 guardian. A "seasonal occupation" means those occupations in which work is performed on a
34 seasonal basis of not more than sixteen (16) weeks.

1 (5) "Employer" includes any person, partnership, corporation, or voluntary association,
2 and the legal representative of a deceased employer; it includes the state, and the city of
3 Providence. It also includes each city, town, and regional school district in the state that votes or
4 accepts the provisions of chapters 29 -- 38 of this title in the manner provided in this chapter or is
5 a party to an appeal from an order of the retirement board filed pursuant to the provisions of
6 Rhode Island general law § 45-21.2-9.

7 (6) "General or special employer":

8 (i) "General employer" includes but is not limited to temporary help companies and
9 employee leasing companies and means a person who for consideration and as the regular course
10 of its business supplies an employee with or without vehicle to another person.

11 (ii) "Special employer" means a person who contracts for services with a general
12 employer for the use of an employee, a vehicle, or both.

13 (iii) Whenever there is a general employer and special employer wherein the general
14 employer supplies to the special employer an employee and the general employer pays or is
15 obligated to pay the wages or salaries of the supplied employee, then, notwithstanding the fact
16 that direction and control is in the special employer and not the general employer, the general
17 employer, if it is subject to the provisions of the Workers' Compensation Act or has accepted that
18 Act, shall be deemed to be the employer as set forth in subdivision (5) of this section and both the
19 general and special employer shall be the employer for purposes of §§ 28-29-17 and 28-29-18.

20 (iv) Effective January 1, 2003, whenever a general employer enters into a contract or
21 arrangement with a special employer to supply an employee or employees for work, the special
22 employer shall require an insurer generated insurance coverage certification, on a form prescribed
23 by the department, demonstrating Rhode Island workers' compensation and employer's liability
24 coverage evidencing that the general employer carries workers' compensation insurance with that
25 insurer with no indebtedness for its employees for the term of the contract or arrangement. In the
26 event that the special employer fails to obtain and maintain at policy renewal and thereafter this
27 insurer generated insurance coverage certification demonstrating Rhode Island workers'
28 compensation and employer's liability coverage from the general employer, the special employer
29 is deemed to be the employer pursuant to the provisions of this section. Upon the cancellation or
30 failure to renew, the insurer having written the workers' compensation and employer's liability
31 policy shall notify the certificate holders and the department of the cancellation or failure to
32 renew and upon notice, the certificate holders shall be deemed to be the employer for the term of
33 the contract or arrangement unless or until a new certification is obtained.

34 (7)(i) "Injury" means and refers to personal injury to an employee arising out of and in

1 the course of his or her employment, connected and referable to the employment.

2 (ii) An injury to an employee while voluntarily participating in a private, group, or
3 employer-sponsored carpool, vanpool, commuter bus service, or other rideshare program, having
4 as its sole purpose the mass transportation of employees to and from work shall not be deemed to
5 have arisen out of and in the course of employment. Nothing in the foregoing provision shall be
6 held to deny benefits under chapters 29 -- 38 and chapter 47 of this title to employees such as
7 drivers, mechanics, and others who receive remuneration for their participation in the rideshare
8 program. Provided, that the foregoing provision shall not bar the right of an employee to recover
9 against an employer and/or driver for tortious misconduct.

10 (8) "Maximum medical improvement" means a point in time when any medically
11 determinable physical or mental impairment as a result of injury has become stable and when no
12 further treatment is reasonably expected to materially improve the condition. Neither the need for
13 future medical maintenance nor the possibility of improvement or deterioration resulting from the
14 passage of time and not from the ordinary course of the disabling condition, nor the continuation
15 of a pre-existing condition precludes a finding of maximum medical improvement. A finding of
16 maximum medical improvement by the workers' compensation court may be reviewed only
17 where it is established that an employee's condition has substantially deteriorated or improved.

18 (9) "Physician" means medical doctor, surgeon, dentist, licensed psychologist,
19 chiropractor, osteopath, podiatrist, or optometrist, as the case may be.

20 (10) "Suitable alternative employment" means employment or an actual offer of
21 employment which the employee is physically able to perform and will not exacerbate the
22 employee's health condition and which bears a reasonable relationship to the employee's
23 qualifications, background, education, and training. The employee's age alone shall not be
24 considered in determining the suitability of the alternative employment.

25 (11) "Independent contractor" means a person who has filed a notice of designation as
26 independent contractor with the director pursuant to § 28-29-17.1 or as otherwise found by the
27 workers' compensation court.

28 SECTION 3. Section 28-39-2 of the General Laws in Chapter 28-39 entitled "Temporary
29 Disability Insurance - General Provisions" is hereby amended to read as follows:

30 **28-39-2. Definitions.**

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

33 (1) "Average weekly wage" means the amount determined by dividing the individual's
34 total wages earned for services performed in employment within his or her base period by the

1 number of that individual's credit weeks within the base period;

2 (2) "Base period" with respect to an individual's benefit year when the benefit year begins
3 on or after October 7, 1990, means the first four (4) of the most recently completed five (5)
4 calendar quarters immediately preceding the first day of an individual's benefit year; provided,
5 that for any individual's benefit year when the benefit year begins on or after October 4, 1992,
6 and for any individual deemed monetarily ineligible for benefits under the "base period" as
7 defined in this subdivision, the department shall make a re-determination of entitlement based
8 upon an alternate base period which consists of the last four (4) completed calendar quarters
9 immediately preceding the first day of the claimant's benefit year. Notwithstanding anything
10 contained to the contrary in this subdivision, the base period shall not include any calendar
11 quarter previously used to establish a valid claim for benefits; provided, however, that the "base
12 period" with respect to members of the United States military service, the Rhode Island National
13 Guard, or a United States military reserve force, and who served in a United States declared
14 combat operation during their military service, who file a claim for benefits following their
15 release from their state or federal active military service and who are deemed to be monetarily
16 ineligible for benefits under this section, shall mean the first four (4) of the most recently
17 completed five (5) calendar quarters immediately preceding the first day the individual was called
18 into that state or federal active military service; provided, that for any individual deemed
19 monetarily ineligible for benefits under the "base period" as defined in this section, the
20 department shall make a re-determination of entitlement based upon an alternative base period
21 which consists of the last four (4) completed calendar quarters immediately preceding the first
22 day the claimant was called into that state or federal active military service. Notwithstanding any
23 provision of this section of the general or public laws to the contrary, the base period shall not
24 include any calendar quarter previously used to establish a valid claim for benefits;

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

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

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

32 (6) "Benefit year" with respect to any individual who does not already have a benefit year
33 in effect, and who files a valid claim for benefits as of November 16, 1958 or any later date,
34 means fifty-two (52) consecutive calendar weeks, the first of which shall be the week containing

1 the day as of which he or she first files that valid claim in accordance with regulations adopted as
2 subsequently prescribed; provided, that for any benefit year beginning on or after October 7,
3 1990, the benefit year shall be fifty-three (53) consecutive calendar weeks if the subsequent filing
4 of a new valid claim immediately following the end of a previous benefit year would result in the
5 overlapping of any quarter of the base period of the prior new claim. In no event shall a new
6 benefit year begin prior to the Sunday next following the end of the old benefit year;

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

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

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

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

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

17 (11) "Employee" means any person ~~who is or has been employed by an employer subject~~
18 ~~to chapters 39 -- 41 of this title and in employment subject to those chapters;~~ providing labor or
19 services for remuneration, as opposed to an independent contractor, unless the hiring entity can
20 establish that all of the following conditions are satisfied:

21 (i) The person is free from the control and direction of the hiring entity in connection
22 with the performance of the work, both under the contract for the performance of the work and in
23 fact;

24 (ii) The person performs work that is outside the usual course of the hiring entity's
25 business; and

26 (iii) The person is customarily engaged in an independently established trade, occupation,
27 or business of the same nature as that involved in the work performed.

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

30 (13) "Employing unit" has the same definition as contained in chapter 42 of this title and
31 includes any governmental entity that elects to become subject to the provisions of chapters 39 --
32 41 of this title, in accordance with the provisions of §§ 28-39-3.1 and 28-39-3.2;

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

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

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

3 (17) "Partial unemployment due to sickness". For weeks beginning on or after January 1,
4 2006 an individual shall be deemed partially unemployed due to sickness in any week of less than
5 full-time work if he or she fails to earn in wages for services for that week an amount equal to the
6 weekly benefit rate for total unemployment due to sickness to which he or she would be entitled
7 if totally unemployed due to sickness and eligible.

8 (i) For the purposes of this subdivision and subdivision (22) 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 (18) "Reserve fund" means the temporary disability insurance reserve fund established by
20 § 28-39-7;

21 (19) "Services" means all endeavors undertaken by an individual that are paid for by
22 another or with respect to which the individual performing the services expects to receive wages
23 or profits;

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

27 (21)(i) "Taxes" means the money payments required by chapters 39 -- 41 of this title, to
28 be made to the temporary disability insurance fund or to the temporary disability insurance
29 reserve fund.

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

34 (22) "Wages" has the same definition as contained in chapter 42 of this title; provided,

1 that no individual shall be denied benefits under chapters 39 -- 41 of this title because his or her
2 employer continues to pay to that individual his or her regular wages, or parts of them, while he
3 or she is unemployed due to sickness and unable to perform his or her regular or customary work
4 or services. The amount of any payments, whether or not under a plan or system, made to or on
5 behalf of an employee by his or her employer after the expiration of six (6) calendar months
6 following the last calendar month in which the employee performed actual bona fide personal
7 services for his or her employer, shall not be deemed to be wages either for the purpose of paying
8 contributions thereon under chapter 40 of this title, or for the purpose of being used as a basis for
9 paying benefits under chapter 41 of this title; and

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

11 SECTION 4. Section 28-42-3 of the General Laws in Chapter 28-42 entitled
12 "Employment Security - General Provisions" is hereby amended to read as follows:

13 **28-42-3. Definitions.**

14 The following words and phrases, as used in chapters 42 -- 44 of this title, have the
15 following meanings unless the context clearly requires otherwise:

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

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

21 (3) "Base period", with respect to an individual's benefit year, means the first four (4), of
22 the most recently completed five (5), calendar quarters immediately preceding the first day of an
23 individual's benefit year. For any individual's benefit year, and for any individual deemed
24 monetarily ineligible for benefits for the "base period" as defined in this subdivision, the
25 department shall make a re-determination of entitlement based upon the alternate, base period that
26 consists of the last four (4) completed calendar quarters immediately preceding the first day of the
27 claimant's benefit year. Notwithstanding anything contained to the contrary in this subdivision,
28 the base period shall not include any calendar quarter previously used to establish a valid claim
29 for benefits; provided, that notwithstanding any provision of chapters 42 -- 44 of this title to the
30 contrary, for the benefit years beginning on or after October 4, 1992, whenever an individual who
31 has received workers' compensation benefits is entitled to reinstatement under § 28-33-47, but the
32 position to which reinstatement is sought does not exist or is not available, the individual's base
33 period shall be determined as if the individual filed for benefits on the date of the injury;

34 (4) "Benefit" means the money payable to an individual as compensation for his or her

1 wage losses due to unemployment as provided in these chapters;

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

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

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

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

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

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

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

29 (12) "Crew leader", for the purpose of subdivision (19) of this section, means an
30 individual who:

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

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

34 (iii) Has not entered into a written agreement with that other person (farm operator) under

1 which that individual (crew leader) is designated as an employee of that other person (farm
2 operator).

3 (13) "Director" means the head of the department of labor and training or his or her
4 authorized representative;

5 (14) "Domestic service employment". "Employment" includes domestic service in a
6 private home performed for a person who paid cash remuneration of one thousand dollars
7 (\$1,000) or more in any calendar quarter in the current calendar year, or the preceding calendar
8 year, to individuals employed in that domestic service;

9 (15) "Employee" means any person ~~who is, or has been, employed by an employer~~
10 ~~subject to those chapters and in employment subject to those chapters;~~ providing labor or services
11 for remuneration, as opposed to an independent contractor, unless the hiring entity can establish
12 that all of the following conditions are satisfied:

13 (i) The person is free from the control and direction of the hiring entity in connection
14 with the performance of the work, both under the contract for the performance of the work and in
15 fact;

16 (ii) The person performs work that is outside the usual course of the hiring entity's
17 business; and

18 (iii) The person is customarily engaged in an independently established trade, occupation,
19 or business of the same nature as that involved in the work performed.

20 (16) "Employer" means:

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

22 (ii) Any employing unit that for some portion of a day on and after January 1, 1956, has,
23 or had, in employment, within any calendar year, one or more individuals; except, however, for
24 "domestic service employment", as defined in subdivision (14) of this section;

25 (iii) For the effective period of its election pursuant to § 28-42-12, any other employing
26 unit that has elected to become subject to chapters 42 -- 44 of this title;

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

34 (17) "Employing unit" means any person, partnership, association, trust, estate, or

1 corporation, whether domestic or foreign, or its legal representative, trustee in bankruptcy,
2 receiver, or trustee, or the legal representative of a deceased person, that has, or had, in his or her
3 employ, one or more individuals. For the purposes of subdivision (14) of this section, a private
4 home shall be considered an employing unit only if the person for whom the domestic service
5 was performed paid cash remuneration of one thousand dollars (\$1,000) or more in any calendar
6 quarter in the current calendar year, or the preceding calendar year, to individuals employed in
7 that domestic service in that private home;

8 (18)(i) "Employment", subject to §§ 28-42-4 -- 28-42-10, means service, including
9 service in interstate commerce, performed for wages, or under any contract of hire, written or
10 oral, express or implied; provided, that service performed shall also be deemed to constitute
11 employment for all the purposes of chapters 42 -- 44 of this title if performed by an individual in
12 the employ of a nonprofit organization as described in subdivision (25) of this section, except as
13 provided in § 28-42-8(7).

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

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

23 (19) "Employment -- Crew leader". For the purposes of subdivision (12) of this section:

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

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

31 (ii) That individual is not an employee of that other person within the meaning of
32 subdivision (15) of this section; and

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

1 (A) That other person, and not the crew leader, shall be treated as the employer of that
2 individual; and

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

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

11 (21) "Fund" means the employment security fund established by this chapter;

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

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

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

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

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

21 (24)(i) "Institution of higher education" means an educational institution in this state that:

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

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

7 (ii) For the purposes of this subdivision and subdivision (28) of this section, "Wages"
8 includes only that part of remuneration for any work that is in excess of one-fifth (1/5) of the
9 weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar
10 (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one
11 week, and "services" includes only that part of any work for which remuneration in excess of
12 one-fifth (1/5) of the weekly benefit rate for total unemployment, rounded to the next lower
13 multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed
14 and eligible in any one week is payable; provided, that nothing contained in this paragraph shall
15 permit any individual to whom remuneration is payable for any work performed in any week in
16 an amount equal to or greater than his or her weekly benefit rate to receive benefits under this
17 subdivision for that week.

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

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

32 (28) "Total unemployment." An individual shall be deemed totally unemployed in any
33 week in which he or she performs no services (as used in subdivision (26) of this section) and for
34 which he or she earns no wages (as used in subdivision (26) of this section), and in which he or

1 she cannot reasonably return to any self-employment in which he or she has customarily been
2 engaged;

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

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

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

28 (A) Retirement;

29 (B) Sickness or accident disability;

30 (C) Medical and hospitalization expenses in connection with sickness or accident
31 disability; or

32 (D) Death; provided, that the employee has not the:

33 (I) Option to receive, instead of provision for that death benefit, any part of that payment
34 or, if that death benefit is insured, any part of the premiums (or contributions to premiums) paid

1 by his or her employer; and

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

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

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

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

11 (iii) Any amount paid by an employee, or an amount paid by an employer, under a benefit
12 plan organized under Internal Revenue Code [26 U.S.C. § 125].

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

15 SECTION 5. 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

1 This act would, for purposes of wages, workers' compensation, temporary disability and
2 unemployment insurance benefits, create a new definition for the term "employee", which
3 assumes a worker to be an employee, as opposed to an independent contractor, unless three (3)
4 specific conditions are satisfied.

5 This act would take effect upon passage.

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LC004191
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