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LC002841
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2025

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION --
GENERAL PROVISIONS

Introduced By: Senators Ciccone, Burke, Patalano, Tikoian, and Raptakis

Date Introduced: May 09, 2025

Referred To: Senate Labor & Gaming

It is enacted by the General Assembly as follows:

- 1 SECTION 1. Section 28-29-2 of the General Laws in Chapter 28-29 entitled "Workers'
- 2 Compensation — General Provisions" is hereby amended to read as follows:
- 3 **28-29-2. Definitions.**
- 4 In chapters 29 — 38 of this title, unless the context otherwise requires:
- 5 (1) "Department" means the department of labor and training.
- 6 (2) "Director" means the director of labor and training or his or her designee unless
- 7 specifically stated otherwise.
- 8 (3)(i) "Earnings capacity" means the weekly straight-time earnings that an employee could
- 9 receive if the employee accepted an actual offer of suitable alternative employment. Earnings
- 10 capacity can also be established by the court based on evidence of ability to earn, including, but not
- 11 limited to, a determination of the degree of functional impairment and/or disability, that an
- 12 employee is capable of employment. The court may, in its discretion, take into consideration the
- 13 performance of the employee's duty to actively seek employment in scheduling the implementation
- 14 of the reduction. The employer need not identify particular employment before the court can direct
- 15 an earnings capacity adjustment. In the event that an employee returns to light-duty employment
- 16 while partially disabled, an earnings capacity shall not be set based upon actual wages earned until
- 17 the employee has successfully worked at light duty for a period of at least thirteen (13) weeks.
- 18 (ii) As used under the provisions of this title, "functional impairment" means an anatomical

1 or functional abnormality existing after the date of maximum medical improvement as determined
2 by a medically or scientifically demonstrable finding and based upon the sixth (6th) edition of the
3 American Medical Association's Guide to the Evaluation of Permanent Impairment or comparable
4 publications of the American Medical Association.

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

8 (4)(i) "Employee" means any person who has entered into the employment of or works
9 under contract of service or apprenticeship with any employer, except that in the case of a city or
10 town other than the city of Providence it shall only mean that class or those classes of employees
11 as may be designated by a city, town, or regional school district in a manner provided in this chapter
12 to receive compensation under chapters 29 — 38 of this title.

13 (ii) Any person employed by the state of Rhode Island, except for sworn employees of the
14 Rhode Island state police, ~~or by the Rhode Island airport corporation~~ who is otherwise entitled to
15 the benefits of chapter 19 of title 45 shall be subject to the provisions of chapters 29 — 38 of this
16 title for ~~all~~ case management procedures and dispute resolution ~~for all benefits~~ by the workers'
17 compensation court for the following benefit and disability determinations:

18 (A) The nature and status of disability of the injured employee;

19 (B) The nature and location of injury relative to the work incident;

20 (C) Maximum medical improvement (MMI), as it is defined under § 28-33-2(9);

21 (D) All issues of legal and/or medical causation;

22 (E) Suitable alternative employment, and;

23 (F) The assignment of fees and costs pursuant to the provisions of § 28-35-32. The court
24 may in its discretion appoint an impartial medical examiner in accordance with § 28-33-35. The
25 court shall hereby be empowered to enforce all of its orders, decrees and consent agreements of the
26 parties.

27 ~~(iii)~~(iii) The term "employee" does not include any individual who is a shareholder or
28 director in a corporation, general or limited partners in a general partnership, a registered limited-
29 liability partnership, a limited partnership, or partners in a registered limited-liability limited
30 partnership, or any individual who is a member in a limited-liability company. These exclusions
31 do not apply to shareholders, directors, and members who have entered into the employment of or
32 who work under a contract of service or apprenticeship within a corporation or a limited-liability
33 company.

34 ~~(iii)~~(iv) The term "employee" also does not include a sole proprietor, independent

1 contractor, or a person whose employment is of a casual nature, and who is employed other than
2 for the purpose of the employer's trade or business, or a person whose services are voluntary or
3 who performs charitable acts, nor shall it include the members of the regularly organized fire and
4 police departments of any town or city except for appeals from an order of the retirement board
5 filed pursuant to the provisions of § 45-21.2-9; provided, however, that it shall include the members
6 of the police and aircraft rescue and firefighting (ARFF) units of the Rhode Island airport
7 corporation.

8 ~~(iv)~~(v) Whenever a contractor has contracted with the state, a city, town, or regional school
9 district, any person employed by that contractor in work under contract shall not be deemed an
10 employee of the state, city, town, or regional school district as the case may be.

11 ~~(v)~~(vi) Any person who on or after January 1, 1999, was an employee and became a
12 corporate officer shall remain an employee, for purposes of these chapters, unless and until
13 coverage under this act is waived pursuant to § 28-29-8(b) or § 28-29-17. Any person who is
14 appointed a corporate officer between January 1, 1999, and December 31, 2001, and was not
15 previously an employee of the corporation, will not be considered an employee, for purposes of
16 these chapters, unless that corporate officer has filed a notice pursuant to § 28-29-19(c).

17 ~~(vi)~~(vii) In the case of a person whose services are voluntary or who performs charitable
18 acts, any benefit received, in the form of monetary remuneration or otherwise, shall be reportable
19 to the appropriate taxation authority but shall not be deemed to be wages earned under contract of
20 hire for purposes of qualifying for benefits under chapters 29 — 38 of this title.

21 ~~(vii)~~(viii) Any reference to an employee who had been injured shall, where the employee
22 is dead, include a reference to his or her dependents as defined in this section, or to his or her legal
23 representatives, or, where he or she is a minor or incompetent, to his or her conservator or guardian.

24 ~~(viii)~~(ix) A "seasonal occupation" means those occupations in which work is performed on
25 a seasonal basis of not more than sixteen (16) weeks.

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

31 (6) "General or special employer":

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

1 (ii) “Special employer” means a person who contracts for services with a general employer
2 for the use of an employee, a vehicle, or both.

3 (iii) Whenever there is a general employer and special employer wherein the general
4 employer supplies to the special employer an employee and the general employer pays or is
5 obligated to pay the wages or salaries of the supplied employee, then, notwithstanding the fact that
6 direction and control is in the special employer and not the general employer, the general employer,
7 if it is subject to the provisions of the workers’ compensation act or has accepted that act, shall be
8 deemed to be the employer as set forth in subsection (5) of this section and both the general and
9 special employer shall be the employer for purposes of §§ 28-29-17 and 28-29-18.

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

24 (7) “Independent contractor” means a person who has filed a notice of designation as
25 independent contractor with the director pursuant to § 28-29-17.1 or as otherwise found by the
26 workers’ compensation court.

27 (8)(i) “Injury” means and refers to personal injury to an employee arising out of and in the
28 course of his or her employment, connected and referable to the employment.

29 (ii) An injury to an employee while voluntarily participating in a private, group, or
30 employer-sponsored carpool, vanpool, commuter bus service, or other rideshare program, having
31 as its sole purpose the mass transportation of employees to and from work shall not be deemed to
32 have arisen out of and in the course of employment. Nothing in the foregoing provision shall be
33 held to deny benefits under chapters 29 — 38 and chapter 47 of this title to employees such as
34 drivers, mechanics, and others who receive remuneration for their participation in the rideshare

1 program. Provided, that the foregoing provision shall not bar the right of an employee to recover
2 against an employer and/or driver for tortious misconduct.

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

11 (10) "Physician" means medical doctor, surgeon, dentist, licensed psychologist,
12 chiropractor, osteopath, podiatrist, or optometrist, as the case may be.

13 (11) "Suitable alternative employment" means employment or an actual offer of
14 employment that the employee is physically able to perform and will not exacerbate the employee's
15 health condition and that bears a reasonable relationship to the employee's qualifications,
16 background, education, and training. The employee's age alone shall not be considered in
17 determining the suitability of the alternative employment.

18 SECTION 2. Section 28-33-13 of the General Laws in Chapter 28-33 entitled "Workers'
19 Compensation — Benefits" is hereby amended to read as follows:

20 **28-33-13. Persons presumed wholly dependent.**

21 The following persons shall be conclusively presumed to be wholly dependent for support
22 upon a deceased employee:

23 (1) ~~A wife upon a husband with whom she lives, or from whom she was living apart for a~~
24 ~~justifiable cause, or because he had deserted her, or upon whom she is dependent at the time of his~~
25 ~~death.~~ A spouse either residing with the deceased employee or living apart from the deceased
26 employee for justifiable cause, or a spouse who had been deserted or was dependent on the deceased
27 employee at the time of the employee's death. The findings of the workers' compensation court
28 upon the questions of justifiable cause and desertion shall be final for the purposes of this chapter.

29 ~~(2) A husband upon a wife with whom he lives or upon whom he is dependent at the time~~
30 ~~of her death.~~

31 ~~(3)~~(2) A child or children, including adopted and stepchildren, under the age of eighteen
32 (18) years, or over that age but physically or mentally incapacitated from earning, upon the parent
33 with whom he or she is or they are living or upon whom he or she is or they are dependent at the
34 time of the death of that parent, there being no surviving dependent parent. In case there is more

1 than one child who is dependent, the compensation hereunder shall be equally divided among them.

2 SECTION 3. Section 45-19-1 of the General Laws in Chapter 45-19 entitled "Relief of
3 Injured and Deceased Fire Fighters and Police Officers" is hereby amended to read as follows:

4 **45-19-1. Salary payment during line of duty illness or injury.**

5 (a)(1) Whenever any police officer of the Rhode Island airport corporation or whenever
6 any police officer, firefighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or
7 deputy fire marshal of any city, town, fire district, or the state of Rhode Island is wholly or partially
8 incapacitated by reason of injuries received or sickness contracted in the performance of his or her
9 duties or due to their rendering of emergency assistance within the physical boundaries of the state
10 of Rhode Island at any occurrence involving the protection or rescue of human life which
11 necessitates that they respond in a professional capacity when they would normally be considered
12 by their employer to be officially off-duty, the respective city, town, fire district, state of Rhode
13 Island, or Rhode Island airport corporation by which the police officer, firefighter, crash rescue
14 crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal, is employed, shall,
15 during the period of the incapacity, pay the police officer, firefighter, crash rescue crewperson, fire
16 marshal, chief deputy fire marshal, or deputy fire marshal, the salary or wage and benefits to which
17 the police officer, firefighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or
18 deputy fire marshal, would be entitled had he or she not been incapacitated, and shall pay the
19 medical, surgical, dental, optical, or other attendance, or treatment, nurses, and hospital services,
20 medicines, crutches, and apparatus for the necessary period, except that if any city, town, fire
21 district, the state of Rhode Island, or Rhode Island airport corporation provides the police officer,
22 firefighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal,
23 with insurance coverage for the related treatment, services, or equipment, then the city, town, fire
24 district, the state of Rhode Island, or Rhode Island airport corporation is only obligated to pay the
25 difference between the maximum amount allowable under the insurance coverage and the actual
26 cost of the treatment, service, or equipment. In addition, the cities, towns, fire districts, the state of
27 Rhode Island, or Rhode Island airport corporation shall pay all similar expenses incurred by a
28 member who has been placed on a disability pension and suffers a recurrence of the injury or illness
29 that dictated his or her disability retirement, subject to the provisions of subsection (j) herein.

30 (2) A police officer or firefighter diagnosed with post-traumatic stress disorder (as
31 described in the Diagnostic and Statistical Manual of Mental Disorders, current edition, published
32 by the American Psychiatric Association) by an individual who holds the title of an independent
33 licensed mental health professional with a master's degree, related to the exposure of potentially
34 traumatic events, resulting from their acting within the course of their employment or from the

1 rendering of emergency assistance in the state of Rhode Island, at any occurrence involving the
2 protection or the rescue of human life while off-duty, as set forth in subsection (h) of this section,
3 shall be presumed to have sustained an injury in the line of duty, as that term is used in subsection
4 (a)(1) of this section, unless the contrary is proven by a fair preponderance of the evidence that the
5 post-traumatic stress injury/PTSD is not related to their job as a police officer or firefighter. The
6 benefits provided for under this section shall not be extended to a police officer or firefighter, if
7 their post-traumatic stress injury/PTSD diagnosis arises out of any disciplinary action, work
8 evaluation, job transfer, layoff, demotion, termination, or similar adverse job actions.

9 (b) As used in this section, “police officer” means and includes any chief or other member
10 of the police department of any city or town regularly employed at a fixed salary or wage and any
11 deputy sheriff, member of the fugitive task force, or capitol police officer, permanent
12 environmental police officer or criminal investigator of the department of environmental
13 management, or airport police officer.

14 (c) As used in this section, “firefighter” means and includes any chief or other member of
15 the fire department or rescue personnel of any city, town, or fire district, and any person employed
16 as a member of the fire department of the town of North Smithfield, or fire department or district
17 in any city or town.

18 (d) As used in this section, “crash rescue crewperson” means and includes any chief or
19 other member of the emergency crash rescue section, division of airports, or department of
20 transportation of the state of Rhode Island regularly employed at a fixed salary or wage.

21 (e) As used in this section, “fire marshal,” “chief deputy fire marshal,” and “deputy fire
22 marshal” mean and include the fire marshal, chief deputy fire marshal, and deputy fire marshals
23 regularly employed by the state of Rhode Island pursuant to the provisions of chapter 28.2 of title
24 23.

25 (f) Any person employed by the state of Rhode Island, except for sworn employees of the
26 Rhode Island state police, who is otherwise entitled to the benefits of chapter 19 of this title shall
27 be subject to the provisions of chapters 29 — 38 of title 28 for ~~all~~ case management procedures and
28 dispute resolution ~~for all benefits~~ by the workers' compensation court for the following benefit and
29 disability determinations:

30 (A) The nature and status of disability of the injured employee;

31 (B) The nature and location of injury relative to the work incident;

32 (C) Maximum medical improvement (MMI), as it is defined under § 28-33-2(9);

33 (D) All issues of legal and/or medical causation;

34 (E) The assignment of fees and costs pursuant to the provisions of § 28-35-32. The court

1 may in its discretion appoint an impartial medical examiner in accordance with § 28-33-35. The
2 court shall hereby be empowered to enforce all of its orders, decrees and consent agreements of the
3 parties.

4 (g) In order to receive the benefits provided for under this section, a police officer or
5 firefighter must prove to his or her employer that he or she had reasonable grounds to believe that
6 there was an emergency that required an immediate need for their assistance for the protection or
7 rescue of human life.

8 (h) Any claims to the benefits provided for under this section resulting from the rendering
9 of emergency assistance in the state of Rhode Island at any occurrence involving the protection or
10 rescue of human life while off-duty, shall first require those covered by this section to submit a
11 sworn declaration to their employer attesting to the date, time, place, and nature of the event
12 involving the protection or rescue of human life causing the professional assistance to be rendered
13 and the cause and nature of any injuries sustained in the protection or rescue of human life. Sworn
14 declarations shall also be required from any available witness to the alleged emergency involving
15 the protection or rescue of human life.

16 (i) All declarations required under this section shall contain the following language:

17 “Under penalty of perjury, I declare and affirm that I have examined this declaration,
18 including any accompanying schedules and statements, and that all statements contained herein are
19 true and correct.”

20 (j) Any person, not employed by the state of Rhode Island, receiving injured-on-duty
21 benefits pursuant to this section, and subject to the jurisdiction of the state retirement board for
22 accidental retirement disability, for an injury occurring on or after July 1, 2011, shall apply for an
23 accidental disability retirement allowance from the state retirement board not later than the later of
24 eighteen (18) months after the date of the person’s injury that resulted in the person’s injured-on-
25 duty status or sixty (60) days from the date on which the treating physician certifies that the person
26 has reached maximum medical improvement. Nothing herein shall be construed to limit or alter
27 any and all rights of the parties with respect to independent medical examination or otherwise, as
28 set forth in the applicable collective bargaining agreement. Notwithstanding the forgoing, any
29 person receiving injured-on-duty benefits as the result of a static and incapacitating injury whose
30 permanent nature is readily obvious and ascertainable shall be required to apply for an accidental
31 disability retirement allowance within sixty (60) days from the date on which the treating physician
32 certifies that the person’s injury is permanent, or sixty (60) days from the date on which the
33 determination of permanency is made in accordance with the independent medical examination
34 procedures as set forth in the applicable collective bargaining agreement.

1 (1) If a person with injured-on-duty status fails to apply for an accidental disability
2 retirement allowance from the state retirement board within the time frame set forth above, that
3 person's injured-on-duty payment shall terminate. Further, any person suffering a static and
4 incapacitating injury as set forth in subsection (j) above and who fails to apply for an accidental
5 disability benefit allowance as set forth in subsection (j) shall have his or her injured-on-duty
6 payment terminated.

7 (2) A person who so applies shall continue to receive injured-on-duty payments, and the
8 right to continue to receive IOD payments of a person who so applies shall terminate in the event
9 of a final ruling of the workers' compensation court allowing accidental disability benefits. Nothing
10 herein shall be construed to limit or alter any and all rights of the parties with respect to independent
11 medical examination or otherwise, as set forth in the applicable collective bargaining agreement.

12 (k) Any person employed by the state of Rhode Island who is currently receiving injured-
13 on-duty benefits or any person employed by the state of Rhode Island who in the future is entitled
14 to injured-on-duty benefits pursuant to this chapter, and subject to the jurisdiction of the state
15 retirement board for accidental retirement disability, shall apply for an accidental disability
16 retirement allowance from the state retirement board ~~not later than sixty (60) days from the date on~~
17 ~~which a treating physician or an independent medical examiner certifies that the person has reached~~
18 ~~maximum medical improvement, and in any event not later than eighteen (18) months after the date~~
19 ~~of the person's injury that resulted in the person being on injured-on-duty~~ the later of eighteen (18)
20 months after the date of the person's injury that resulted in the person's injured-on-duty status or
21 sixty (60) days from the date on which the treating physician certifies that the person has reached
22 maximum medical improvement. Nothing herein shall be construed to limit or alter any and all
23 rights of the parties with respect to independent medical examination or otherwise, as set forth in
24 the applicable collective bargaining agreement. Notwithstanding the forgoing, any person receiving
25 injured-on-duty benefits as the result of a static and incapacitating injury whose permanent nature
26 is readily obvious and ascertainable shall be required to apply for an accidental disability retirement
27 allowance within sixty (60) days from the date on which a treating physician or an independent
28 medical examiner certifies that the person's injury is permanent, or sixty (60) days from the date
29 on which such determination of permanency is made in accordance with the independent medical
30 examination procedures as set forth in the applicable collective bargaining agreement.

31 (1) If a person employed by the state of Rhode Island with injured-on-duty status fails to
32 apply for an accidental disability retirement allowance from the state retirement board within the
33 time frame set forth in subsection (k) above, that person's injured-on-duty payment shall terminate.
34 Further, any person employed by the state of Rhode Island suffering a static and incapacitating

1 injury as set forth in subsection (k) above and who fails to apply for an accidental disability benefit
2 allowance as set forth in subsection (k) shall have his or her injured-on-duty payment terminated.

3 (2) A person employed by the state of Rhode Island who so applies shall continue to receive
4 injured-on-duty payments, and the right to continue to receive injured-on-duty payments of a
5 person who so applies shall terminate upon final adjudication by the state retirement board
6 approving or denying either ordinary or accidental disability payments and, notwithstanding § 45-
7 31.2-9, this termination of injured-on-duty benefits shall not be stayed.

8 (3)(i) Notwithstanding any other provision of law, all persons employed by the state of
9 Rhode Island entitled to benefits under this section who were injured prior to July 1, 2019, and who
10 have been receiving injured-on-duty benefits pursuant to this section for a period of eighteen (18)
11 months or longer as of July 1, 2019, shall have up to ninety (90) days from July 1, 2019, to apply
12 for an accidental disability retirement benefit allowance. Any person employed by the state of
13 Rhode Island receiving injured-on-duty benefits for a period less than eighteen (18) months as of
14 July 1, 2019, shall apply for an accidental disability retirement benefit allowance within eighteen
15 (18) months of the date of injury that resulted in the person receiving injured-on-duty pay; provided
16 however, said person shall have a minimum of ninety (90) days to apply.

17 Applications for disability retirement received by the state retirement board by any person
18 employed by the State of Rhode Island receiving injured-on-duty payments that shall be deemed
19 untimely pursuant to § 36-10-14(b) shall have ninety (90) days from July 1, 2019, to apply for an
20 accidental disability retirement benefit allowance. Failure to apply for an accidental disability
21 retirement benefit allowance within the timeframe set forth herein shall result in the termination of
22 injured-on-duty benefits.

23 (ii) Any person employed by the state of Rhode Island receiving injured-on-duty payments
24 who has been issued a final adjudication of the state retirement board on an application for an
25 ordinary or accidental disability benefit, either approving or denying the application, shall have his
26 or her injured-on-duty payments terminated.

27 (4) If awarded an accidental disability pension, any person employed by the state of Rhode
28 Island covered under this section shall receive benefits consistent with § 36-10-15.

29 SECTION 4. This act shall take effect on July 1, 2025.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION --
GENERAL PROVISIONS

- 1 This act would clarify the commission's authority to determine the status of an injured-on-
2 duty officer's disability, the description of their injury, whether maximum medical improvement
3 (MMI) has been achieved and determine issues of suitable alternative employment, and to award
4 attorneys' fees and costs after a hearing when applicable to a prevailing injured employee.
5 Additionally, this act would amend inconsistent language to establish conformity concerning the
6 correct applicable deadline for applicable accidental disability pension claim.
7 This act would take effect on July 1, 2025.

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