

2011 -- H 6244

LC02820

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

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

Introduced By: Representatives Williams, Edwards, Guthrie, DaSilva, and Hull

Date Introduced: June 09, 2011

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-30-13 of the General Laws in Chapter 28-30 entitled "Workers'  
2 Compensation Court" is hereby amended to read as follows:

3 **28-30-13. Controversies submitted to court.** -- (a) Any controversy over which the  
4 workers' compensation court has jurisdiction in accordance with chapters 29 -- 38 and chapter 53  
5 of this title, including compensation, ~~reasonableness~~ payment of medical and hospital bills (either  
6 before, or, where the parties have expressly provided and the court has approved, after a lump  
7 sum settlement pursuant to section 28-33-25) and a determination of the reasonableness of said  
8 bills, degree of functional impairment and/or disability, a dispute between an insurance carrier  
9 and an employer under a workers' compensation insurance contract, except disputes under the  
10 jurisdiction of the workers' compensation appeals board established pursuant to section 27-9-29,  
11 failure of an employer to secure the payment of compensation under chapters 29 -- 38 and chapter  
12 53 of this title and any controversy in which the state or any of its political subdivisions is a party,  
13 shall be submitted to the court in the manner provided in chapters 33 and 35 of this title.

14 (b) Disputes between an insurance carrier and an employer under a workers'  
15 compensation insurance contract shall not be subject to a pretrial conference in accordance with  
16 section 28-35-20, but shall be assigned consistent with the rules and regulations of the workers'  
17 compensation court.

18 SECTION 2. Section 28-41-6 of the General Laws in Chapter 28-41 entitled "Temporary

1 Disability Insurance - Benefits" is hereby amended to read as follows:

2 **28-41-6. Effect on waiting period credit and benefits of receipt of workers'**  
3 **compensation payments.** -- (a) No individual shall be entitled to receive waiting period credit  
4 benefits or dependents' allowances with respect to which benefits are paid or payable to that  
5 individual under any workers' compensation law of this state, any other state, or the federal  
6 government, on account of any disability caused by accident or illness. In the event that workers'  
7 compensation benefits are subsequently awarded to an individual, whether on a weekly basis or  
8 as a lump sum, for a week or weeks with respect to which that individual has received waiting  
9 period credit, benefits, or dependents' allowances, under chapters 39 -- 41 of this title, the  
10 director, for the temporary disability insurance fund, shall be subrogated to that individual's rights  
11 in that award to the extent of the amount of benefits and/or dependents' allowances paid to him or  
12 her under those chapters.

13 Provided however, that nothing herein shall be construed to deny benefits or waiting  
14 period credit benefits or dependents' allowances under this chapter to individuals who receive a  
15 lump sum settlement pursuant to section 28-33-25 and subsequently apply for benefits under this  
16 chapter as long as the sickness or illness is materially different from the one for which the  
17 individual was paid workers' compensation, is not affected by said injury and/or the medical  
18 condition did not result from the injury for which the employee was paid workers' compensation  
19 benefits.

20 (b) (1) Whenever an employer or his or her insurance carrier has been notified that an  
21 individual has filed a claim for unemployment due to sickness for any week or weeks under  
22 chapters 39 -- 41 of this title for which week or weeks that individual is or may be eligible for  
23 benefits under chapters 29 -- 38 of this title, that notice shall constitute a lien upon any pending  
24 award, order, or settlement to that individual under chapters 29 -- 38 of this title.

25 (2) The employer or his insurance carrier shall be required to reimburse the director, for  
26 the temporary disability insurance fund, the amount of benefits and/or dependents' allowances  
27 received by the individual under chapters 39 -- 41 of this title, for any week or weeks for which  
28 that award, order, or settlement is made.

29 (c) Whenever an individual becomes entitled to or is awarded workers' compensation  
30 benefits for the same week or weeks with respect to which he has received benefits and/or  
31 dependents' allowances under chapters 39 -- 41 of this title, and notice of that receipt has been  
32 given to the division of workers' compensation of the department of labor and training and/or the  
33 workers' compensation court, the division or court is required to and shall incorporate in the  
34 award, order, or approval of settlement, an order requiring the employer or his or her insurance

1 carrier to reimburse the director, for the temporary disability insurance fund, the amount of any  
2 disability benefits and/or dependents' allowances which may have been paid to the employee for  
3 unemployment due to sickness for those weeks under chapters 39 -- 41 of this title. Nothing  
4 herein shall be construed to deny benefits under this chapter to individuals who receive a lump  
5 sum settlement pursuant to section 28-33-25 and subsequently apply for benefits under this  
6 chapter as long as the sickness or illness is materially different from the one for which the  
7 individual was paid workers' compensation, is not affected by said injury and/or the medical  
8 condition did not result from the injury for which the employee was paid workers' compensation  
9 benefits.

10 (d) If, through inadvertence, error, or mistake, an individual has received benefit  
11 payments and/or dependents' allowances for any week or weeks under chapters 39 -- 41 of this  
12 title, and has also received payments for the same week or weeks under any workers'  
13 compensation law of this state, any other state, or of the federal government, he or she shall, in  
14 the discretion of the director of the department of labor and training, be liable to have that sum  
15 deducted from any benefits payable to him or her under chapters 39 -- 41 of this title, or shall be  
16 liable to repay to the director, for the temporary disability insurance fund, a sum equal to that  
17 amount received, and that sum shall be collectible in the manner provided in section 28-40-12 for  
18 the collection of past due contributions.

19 (e) Notwithstanding any other provision of this section, no individual who, prior to  
20 September 1, 1969, has sustained an injury by reason of which he or she may be eligible for  
21 benefits under chapters 29-38 of this title shall be deprived of any rights which he or she may  
22 have under chapters 39 -- 41 of this title.

23 SECTION 3. Sections 28-53-2 and 28-53-7 of the General Laws in Chapter 28-53  
24 entitled "Rhode Island Uninsured Employers Fund" are hereby amended to read as follows:

25 **28-53-2. Establishment -- Sources -- Administration.** -- (a) There shall be established  
26 within the department of labor and training a special restricted receipt account to be known as the  
27 Rhode Island uninsured employers fund. The fund shall be capitalized from excise taxes assessed  
28 against uninsured employers pursuant to the provisions of section 28-53-9 of this chapter and  
29 from general revenues appropriated by the legislature. Beginning in state fiscal year ending June  
30 30, ~~2012~~ 2013, the legislature may appropriate up to two million dollars (\$2,000,000) in general  
31 revenue funds annually for deposit into the Rhode Island uninsured employers fund.

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

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

4 **28-53-7. Payments to employees of uninsured employers.** -- (a) Where it is determined  
5 that the employee was injured in the course of employment while working for an employer who  
6 fails to maintain a policy of workers' compensation insurance as required by Rhode Island general  
7 laws section 28-36-1, et seq., the uninsured employers fund shall pay the benefits to which the  
8 injured employee would be entitled pursuant to chapters 29 to 38 of this title subject to the  
9 limitations set forth herein.

10 (b) The workers' compensation court shall hear all petitions for payment from the fund  
11 pursuant to Rhode Island general laws section 28-30-1, et seq., provided, however, that the  
12 uninsured employers fund and the employer shall be named as parties to any petition seeking  
13 payment of benefits from the fund.

14 (c) Where an employee is deemed to be entitled to benefits from the uninsured  
15 employers fund, the fund shall pay benefits for disability and medical expenses as provided  
16 pursuant to chapters 29 to 38 of this title except that the employee shall not be entitled to receive  
17 benefits for loss of function and disfigurement pursuant to the provisions of Rhode Island general  
18 laws section 28-33-19.

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

30 (e) In the event that the uninsured employer makes payment of any monies to the  
31 employee to compensate the employee for lost wages or medical expenses, the fund shall be  
32 entitled to a credit for all such monies received by or on behalf of the employee against any future  
33 benefits payable directly to the employee.

34 (f) This section shall apply to injuries that occur on or after January 1, ~~2012~~ [2013](#).

1 SECTION 4. Section 36-10-31 of the General Laws in Chapter 36-10 entitled  
2 "Retirement System-Contributions and Benefits" is hereby amended to read as follows:

3 **36-10-31. Deduction of amounts received from workers' compensation or as**  
4 **damages.** -- Any amount paid or payable under the provisions of any workers' compensation law,  
5 exclusive of Medicare set-aside allocations, specific compensation benefits or any benefits  
6 authorized by the terms of a collective bargaining agreement, or as the result of any action for  
7 damages for personal injuries against the state of Rhode Island on account of the death or  
8 disability of a member shall be offset against and payable in lieu of any benefits payable out of  
9 funds provided by the state under the provisions of this chapter on account of the death or  
10 disability of the member. If the value of the total commuted benefits under any workers'  
11 compensation law or action is less than the present value on an actuarial basis of the benefits  
12 otherwise payable under this chapter, the value of the commuted payments shall be deducted  
13 from the present value of the benefits and the balance thereof shall be payable under the  
14 provisions of this chapter.

15 SECTION 5. Sections 1, 2 and 3 of this act shall take effect upon passage and Section 4  
16 of this act shall be effective upon passage and retroactively apply to cases currently pending  
17 before the Rhode Island retirement board and appeals of prior decisions made by the board.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO LABOR AND LABOR RELATIONS – WORKERS' COMPENSATION  
BENEFITS

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1           This act would clarify the workers' compensation court's jurisdiction over the  
2 reasonableness and payment of medical bills. It would exclude any Medicare set-aside  
3 allocations, specific compensation benefit payments and all collective bargaining agreement  
4 benefits, from being used to offset any disability or death benefits he or she may be entitled to, as  
5 a member of the state retirement system.

6           Sections 1, 2 and 3 of this act would take effect upon passage and Section 4 of this act  
7 would be effective upon passage and retroactively apply to cases currently pending before the  
8 Rhode Island retirement board and appeals of prior decisions made by the board.

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