

2010 -- H 7292

LC00835

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO LABOR AND LABOR RELATIONS

Introduced By: Representative Thomas Winfield

Date Introduced: January 28, 2010

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-33-18 of the General Laws in Chapter 28-33 entitled "Workers'
2 Compensation - Benefits" is hereby amended to read as follows:

3 **28-33-18. Weekly compensation for partial incapacity.** -- (a) While the incapacity for
4 work resulting from the injury is partial, the employer shall pay the injured employee a weekly
5 compensation equal to seventy-five percent (75%) of the difference between his or her spendable
6 average weekly base wages, earnings, or salary before the injury as computed pursuant to the
7 provisions of section 28-38-20, and his or her spendable weekly wages, earnings, salary, or
8 earnings capacity after that, but not more than the maximum weekly compensation rate for total
9 incapacity as set forth in section 28-33-17. The provisions of this section are subject to the
10 provisions of section 28-33-18.2.

11 (b) For all injuries occurring on or after September 1, 1990, where an employee's
12 condition has reached maximum medical improvement and the incapacity for work resulting from
13 the injury is partial, while the incapacity for work resulting from the injury is partial, the
14 employer shall pay the injured employee a weekly compensation equal to seventy percent (70%)
15 of the weekly compensation rate as set forth in subsection (a) of this section. The court may, in its
16 discretion, take into consideration the performance of the employee's duty to actively seek
17 employment in scheduling the implementation of the reduction; provided, however, that in no
18 event shall the reduction be delayed for more than ninety (90) days after maximum medical
19 improvement has been found. The court may implement the reduction on a date earlier than

1 ninety (90) days after the maximum medical improvement has been found, or the reduction shall
2 be implemented by the employer, automatically, on the date ninety (90) days after maximum
3 medical improvement has been found, without the need for any court hearing. The provisions of
4 this subsection are subject to the provisions of section 28-33-18.2 The court may implement the
5 reduction on a date earlier than ninety (90) days after maximum medical improvement has been
6 found, or the reduction .

7 (c) (1) Earnings capacity determined from degree of functional impairment pursuant to
8 section 28-29-2(3) shall be determined as a percentage of the whole person based on the Fifth
9 (5th) edition of the American Medical Association Guides To The Value Of Permanent
10 Impairment. Earnings capacity shall be calculated from the percentage of impairment as follows:

11 (i) For impairment of five percent (5%) or less, earnings capacity shall be calculated so
12 as to extinguish one hundred percent (100%) of weekly benefits.

13 (ii) For impairment of twenty-five percent (25%) or less, but greater than five percent
14 (5%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less
15 the percent of impairment of weekly benefits.

16 (iii) For impairment of fifty percent (50%) or less, but greater than twenty-five percent
17 (25%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less
18 one point two five (1.25) times the percent of impairment of weekly benefits.

19 (iv) For impairment of sixty-five percent (65%) or less, but greater than fifty percent
20 (50%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less
21 one point five (1.5) times the percent of impairment of weekly benefits.

22 (2) An earnings capacity adjustment under this section shall be applicable only when the
23 employee's condition has reached maximum medical improvement under section 28-29-2(3)(ii)
24 and benefits are subject to adjustment pursuant to subsection (b) of this section.

25 (d) In the event partial compensation is paid, in no case shall the period covered by the
26 compensation be greater than three hundred and twelve (312) weeks. In the event that
27 compensation for partial disability is paid under this section for a period of three hundred and
28 twelve (312) weeks, the employee's right to continuing weekly compensation benefits shall be
29 determined pursuant to the terms of section 28-33-18.3. At least twenty-six (26) weeks prior to
30 the expiration of the period, the employer or insurer shall notify the employee and the director of
31 its intention to terminate benefits at the expiration of three hundred and twelve (312) weeks and
32 advise the employee of the right to apply for a continuation of benefits under the terms of section
33 28-33-18.3. In the event that the employer or insurer fails to notify the employee and the director
34 as prescribed, the employer or insurer shall continue to pay benefits to the employee for a period

1 equal to twenty-six (26) weeks after the date the notice is served on the employee and the
2 director.

3 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would provide that a reduction in a workers' weekly compensation shall not be
- 2 delayed for more than ninety (90) days after maximum medical improvement has been found.
- 3 This act would take effect upon passage.

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