

2013 -- S 0229

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

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

Introduced By: Senator James E. Doyle

Date Introduced: February 06, 2013

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-33-18 and 28-33-20 of the General Laws in Chapter 28-33
2 entitled "Workers' Compensation - Benefits" are 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%)~~ eighty-five percent (85%) of the difference
6 between his or her spendable average weekly base wages, earnings, or salary before the injury as
7 computed pursuant to the provisions of section 28-38-20, and his or her spendable weekly wages,
8 earnings, salary, or earnings capacity after that, but not more than the maximum weekly
9 compensation rate for total incapacity as set forth in section 28-33-17. The provisions of this
10 section are subject to the 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,~~ shall take into consideration the performance of the employee's duty to actively seek
17 employment in scheduling the implementation of the reduction. The provisions of this subsection
18 are subject to the provisions of section 28-33-18.2.

1 ~~(c) (1) Earnings capacity determined from degree of functional impairment pursuant to~~
2 ~~section 28-29-2(3) shall be determined as a percentage of the whole person based on the Sixth~~
3 ~~(6th) edition of the American Medical Association Guides To The Value Of Permanent~~
4 ~~Impairment. Earnings capacity shall be calculated from the percentage of impairment as follows:~~

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

7 ~~(ii) For impairment of twenty five percent (25%) or less, but greater than five percent~~
8 ~~(5%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less~~
9 ~~the percent of impairment of weekly benefits.~~

10 ~~(iii) For impairment of fifty percent (50%) or less, but greater than twenty five percent~~
11 ~~(25%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less~~
12 ~~one point two five (1.25) times the percent of impairment of weekly benefits.~~

13 ~~(iv) For impairment of sixty five percent (65%) or less, but greater than fifty percent~~
14 ~~(50%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less~~
15 ~~one point five (1.5) times the percent of impairment of weekly benefits.~~

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

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

31 **28-33-20. Computation of earnings.** -- (a) For the purposes of this chapter, the average
32 weekly wage shall be ascertained as follows:

33 (1) For full-time or regular employees, by dividing the gross wages, inclusive of
34 overtime pay; provided, that bonuses and overtime shall be averaged over the length of

1 employment but not in excess of the preceding fifty-two (52) week period, earned by the injured
2 worker in employment by the employer in whose service he or she is injured during the thirteen
3 (13) calendar weeks immediately preceding the week in which he or she was injured, by the
4 number of calendar weeks during which, or any portion of which, the worker was actually
5 employed by that employer, including any paid vacation time. In making this computation,
6 absence for seven (7) consecutive calendar days, although not in the same calendar week, shall be
7 considered as absence for a calendar week. When the employment commenced otherwise than the
8 beginning of a calendar week, the calendar week and wages earned during that week shall be
9 excluded in making the above computation. When the employment previous to injury as provided
10 above is computed to be less than a net period of two (2) calendar weeks, his or her weekly wage
11 shall be considered to be equivalent to the average weekly wage prevailing in the same or similar
12 employment at the time of injury except that when an employer has agreed to pay a certain hourly
13 wage to the worker, then the hourly wage so agreed upon shall be the hourly wage for the injured
14 worker and his or her average weekly wage shall be computed by multiplying that hourly wage
15 by the number of weekly hours scheduled for full-time work by full-time employees regularly
16 employed by the employer. Where the injured employee has worked for more than one employer
17 during the thirteen (13) weeks immediately preceding his or her injury, his or her average weekly
18 wages shall be calculated upon the basis of wages earned from all those employers in the period
19 involved by totaling the gross earnings from all the employers and dividing by the number of
20 weeks in which he or she was actually employed by any employer, in the same manner as if the
21 employee had worked for a single employer and, except in the case of apportionment of liability
22 among successive employers as provided in section 28-34-8, the employer in whose employ the
23 injury was sustained shall be liable for all benefits provided by chapters 29 -- 38 of this title. A
24 schedule of the computation of the average weekly wage in compliance with this section shall be
25 a necessary part of the memorandum of agreement required by section 28-35-1. Where the
26 employer has been accustomed to paying the employee a sum to cover any special expense
27 incurred by the employee by the nature of his or her employment, the sum paid shall not be
28 reckoned as part of the employee's wages, earnings, or salary. The fact that an employee has
29 suffered a previous injury or received compensation for a previous injury shall not preclude
30 compensation for a later injury or for death; but in determining the compensation for the later
31 injury or death, his or her average weekly wages shall be any sum that will reasonably represent
32 his or her weekly earning capacity at the time of the later injury, in the employment in which he
33 or she was working at that time, and shall be arrived at according to, and subject to the limitations
34 of, the provisions of this section. In computing the average weekly wages earned subsequent to

1 the first injury, the time worked and wages earned prior to that injury shall be excluded.

2 (2) In occupations that are seasonal, the "average weekly wage" means one-fifty second (
3 1/52) of the total wages which the employee has earned during the twelve (12) calendar months
4 immediately preceding the injury.

5 (3) "Wages of an employee working part-time" means the gross wages earned during the
6 number of weeks so employed, or of weeks in which the employee worked, up to a maximum of
7 twenty-six (26) calendar weeks immediately preceding the date of injury, divided by the number
8 of weeks employed, or by twenty-six (26), as the case may be. "Part-time" means working by
9 custom and practice under the verbal or written employment contract in force at the time of the
10 injury, where the employee agrees to work or is expected to work on a regular basis less than
11 twenty (20) hours per week. Wages shall be calculated as follows:

12 (i) For part-time employees, by dividing the gross wages, inclusive of overtime pay;
13 provided, any bonuses and overtime shall be averaged over the length of employment but not in
14 excess of the preceding fifty-two (52) week period, earned by the injured worker in employment
15 by the employer in whose service he or she is injured during the twenty-six (26) consecutive
16 calendar weeks immediately preceding the week in which he or she was injured, by the number of
17 calendar weeks during which, or any portion of which, the worker was actually employed by that
18 employer, including any paid vacation time. In making this computation, absence for seven (7)
19 consecutive calendar days, although not in the same calendar week, shall be considered as
20 absence for a calendar week. Overtime pay shall be averaged over the twenty-six (26) weeks
21 preceding the injury and added to the average weekly wage. When the employment commenced
22 otherwise than the beginning of a calendar week, the calendar week and wages earned during that
23 week shall be excluded in making the above computation. When the employment previous to
24 injury as provided above is computed to be less than a net period of two (2) weeks, the weekly
25 wage shall be considered to be equivalent to the average weekly wage prevailing in the same or
26 similar employment at the time of injury except that when an employer has agreed to pay a
27 certain hourly wage to the worker, then the hourly wage so agreed upon shall be the hourly wage
28 for the injured worker and his or her average weekly wage shall be computed by multiplying that
29 hourly wage by the number of weekly hours agreed upon in the contract of hire.

30 (ii) In the event the injured employee had concurrent employment with one or more
31 additional employers at the time of injury, the average weekly wage shall be calculated for the
32 twenty-six (26) calendar weeks preceding the week in which the employee was injured upon the
33 basis of wages earned from all those employers in the period involved by totaling the gross
34 earnings from all the employers and dividing by the number of usable weeks the employee

1 actually was employed by that employer, in the same manner as if the employee had worked for a
2 single employer; provided, in the case of apportionment of liability among successive employers
3 pursuant to section 28-34-8, the employer in whose employ the injury was sustained shall be
4 liable for all benefits provided by chapters 29 -- 38 of this title. In the case that the injured
5 employee's other employer is a full-time employer, the average weekly wage shall be calculated
6 according to subdivision (1) for the thirteen (13) calendar weeks immediately preceding the week
7 in which he or she was injured. Calculations for part-time employment shall be calculated
8 separately for the twenty-six (26) calendar weeks immediately preceding the week of injury. A
9 schedule of computation of the average weekly wage in compliance with this section shall be a
10 necessary part of the memorandum of agreement required by section 28-35-1.

11 (iii) Where the employer is accustomed to paying the employee a sum to cover any
12 special expense incurred by the employee by the nature of the employment, that sum shall not be
13 reckoned as part of the employee's wages, earnings, or salary. The fact that an employee has
14 suffered a previous injury or received compensation for a previous injury shall not preclude
15 compensation for a later injury or for death. In determining the compensation for the later injury
16 or death, the average weekly wage shall be any sum that will reasonably represent the employee's
17 earning capacity at the time of the later injury, in the employment in which he or she was working
18 at that time, and shall be derived according to, and subject to, the limitations of the provisions of
19 this section; provided, that in computing the average weekly wages earned subsequent to the first
20 injury, the time worked and wages earned prior to that injury shall be excluded.

21 SECTION 2. This act shall take effect upon passage and shall apply retroactively,
22 regardless of the date of injury.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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

1 This act would change the spendable base wage calculation from seventy-five percent
2 (75%) to eighty-five percent (85%) under the workers' compensation law. This act would also
3 make additional changes to the law relating to partial incapacity.

4 This act would take effect upon passage and would apply retroactively, regardless of the
5 date of injury.

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