

2021 -- S 0937 SUBSTITUTE A

LC002928/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

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

Introduced By: Senators Ciccone, F Lombardi, and McCaffrey

Date Introduced: May 27, 2021

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-33-20.1 and 28-33-25.1 of the General Laws in Chapter 28-33  
2 entitled "Workers' Compensation - Benefits" are hereby amended to read as follows:

3 **28-33-20.1. Computation of earnings for recurrence -- Burden of employee to**  
4 **establish recurrence.**

5 (a) In the event a person collecting benefits under this chapter, regardless of the date of  
6 injury, has returned to employment for a period of twenty-six (26) weeks or more and suffers a  
7 recurrence of the injury which precipitated the person collecting benefits under this chapter, the  
8 average weekly wage shall be ascertained ~~by dividing the gross wages earned by the injured worker~~  
9 ~~in employment by the employer in whose service he or she is injured during~~ by applying the same  
10 formula of § 28-33-20 to the thirteen (13) calendar weeks immediately preceding the week in which  
11 he or she suffered the recurrence, ~~by the number of calendar weeks during which, or any portion of~~  
12 ~~which, the worker was actually employed by that employer.~~ In making this computation, absence  
13 for seven (7) consecutive calendar days, although not in the same calendar week, shall be  
14 considered as absence for a calendar week.

15 (b) For all petitions filed to prove recurrence of incapacity to work, regardless of the date  
16 of injury, the employee must document that the incapacity has increased or returned without the  
17 need for the employee to document a comparative change of condition.

18 **28-33-25.1. Settlement of disputed cases.**

1 Notwithstanding the provisions of §§ 28-33-25 and 28-33-26, in cases where liability of  
2 the employer for payment of workers' compensation benefits has not been finally established, the  
3 parties may submit a settlement proposal to the workers' compensation court for approval. If, upon  
4 consideration, a judge of the workers' compensation court deems the settlement proposal to be in  
5 the best interest of the parties, including the employee, employer, and the insurance carrier, ~~and~~  
6 ~~where applicable the Centers for Medicare and Medicaid Services (CMS) as their interests may~~  
7 ~~apply~~, the judge may approve the settlement. Payment by the employer or insurer shall not be  
8 deemed to be the payment of workers' compensation benefits, but shall be considered a compromise  
9 payment of a disputed claim. The settlement and payment pursuant to it shall not be subject to liens  
10 set forth in § 28-33-27(b) and must be paid within fourteen (14) days of entry of an order to pay or  
11 the date(s) upon which payment(s) is/are due pursuant to a court order, and a penalty of one hundred  
12 dollars (\$100) shall be assessed for every day the payment is delinquent. Upon payment, the  
13 employer and insurer shall be entitled to a duly executed release that fully and finally absolves and  
14 discharges the employer and insurer from any and all liability arising out of the claimed injury.

15 SECTION 2. Sections 28-33-17 and 28-33-18 of the General Laws in Chapter 28-33  
16 entitled "Workers' Compensation - Benefits" are hereby amended to read as follows:

17 **28-33-17. Weekly compensation for total incapacity -- Permanent total disability --**  
18 **Dependents' allowances.**

19 (a)(1) ~~While~~ For all injuries on or after January 1, 2022, while the incapacity for work  
20 resulting from the injury is total, the employer shall pay the injured employee a weekly  
21 compensation equal to ~~seventy-five percent (75%)~~ sixty-two percent (62%) of his or her average  
22 weekly ~~spendable~~ base wages, earnings, or salary, as computed pursuant to the provisions of § 28-  
23 33-20. For all injuries on or before December 31, 2021, while the incapacity for work resulting  
24 from the injury is total, the employer shall pay the injured employee a weekly compensation equal  
25 to seventy-five percent (75%) of his or her average weekly spendable base wages, earnings, or  
26 salary, as computed pursuant to the provisions of § 28-33-20. The amount may not exceed more  
27 than sixty percent (60%) of the state average weekly wage of individuals in covered employment  
28 under the provisions of the Rhode Island employment security act as computed and established by  
29 the Rhode Island department of labor and training, annually, on or before May 31 of each year,  
30 under the provisions of § 28-44-6(a). Effective September 1, 1974, the maximum rate for weekly  
31 compensation for total disability shall not exceed sixty-six and two-thirds percent (662/3%) of the  
32 state average weekly wage, as computed and established under the provisions of § 28-44-6(a).  
33 Effective September 1, 1975, the maximum rate for weekly compensation for total disability shall  
34 not exceed one hundred percent (100%) of the state average weekly wage, as computed and

1 established under the provisions of § 28-44-6(a). Effective September 1, 2007, the maximum rate  
2 for weekly compensation for total disability shall not exceed one hundred fifteen percent (115%)  
3 of the state average weekly wage, as computed and established under the provisions of § 28-44-  
4 6(a). Effective October 1, 2016, the maximum rate for weekly compensation for total disability  
5 shall not exceed one hundred twenty percent (120%) of the state average weekly wage as computed  
6 and established under the provisions of § 28-44-6(a), and effective October 1, 2017, the maximum  
7 rate for weekly compensation for total disability shall not exceed one hundred twenty-five percent  
8 (125%) of the state average weekly wage, as computed and established under the provisions of §  
9 28-44-6(a). If the maximum weekly benefit rate is not an exact multiple of one dollar (\$1.00), then  
10 the rate shall be raised to the next higher multiple of one dollar (\$1.00).

11 (2) The average weekly wage computed and established under § 28-44-6(a) is applicable  
12 to injured employees whose injury occurred on or after September 1, 2000, and shall be applicable  
13 for the full period during which compensation is payable.

14 (3)(i) "Spendable earnings" means the employee's gross, average weekly wages, earnings,  
15 or salary, including any gratuities reported as income, reduced by an amount determined to reflect  
16 amounts that would be withheld from the wages, earnings, or salary under federal and state income  
17 tax laws, and under the Federal Insurance Contributions Act (FICA), 26 U.S.C. § 3101 et seq.,  
18 relating to Social Security and Medicare taxes. In all cases, it is to be assumed that the amount  
19 withheld would be determined on the basis of expected liability of the employee for tax for the  
20 taxable year in which the payments are made without regard to any itemized deductions but taking  
21 into account the maximum number of personal exemptions allowable.

22 (ii) Each year, the director shall publish tables of the average weekly wage and seventy-  
23 five percent (75%) of spendable earnings that are to be in effect on May 10. These tables shall be  
24 conclusive for the purposes of converting an average weekly wage into seventy-five percent (75%)  
25 of spendable earnings. In calculating spendable earnings, the director shall have discretion to  
26 exempt funds assigned to third parties by order of the family court pursuant to § 8-10-3 and funds  
27 designated for payment of liens pursuant to § 28-33-27 upon submission of supporting evidence.

28 (b)(1) In the following cases, it shall, for the purpose of this section, be that the injury  
29 resulted in permanent total disability:

30 (i) The total and irrecoverable loss of sight in both eyes or the reduction to one-tenth  
31 (1/10th) or less of normal vision with glasses;

32 (ii) The loss of both feet at or above the ankle;

33 (iii) The loss of both hands at or above the wrist;

34 (iv) The loss of one hand and one foot;

1 (v) An injury to the spine resulting in permanent and complete paralysis of the legs or arms;  
2 and

3 (vi) An injury to the skull resulting in incurable imbecility or insanity.

4 (2) In all other cases, total disability shall be determined only if, as a result of the injury,  
5 the employee is physically unable to earn any wages in any employment; provided, that in cases  
6 where manifest injustice would otherwise result, total disability shall be determined when an  
7 employee proves, taking into account the employee's age, education, background, abilities, and  
8 training, that he or she is unable, on account of his or her compensable injury, to perform his or her  
9 regular job and is unable to perform any alternative employment. The court may deny total  
10 disability under this subsection without requiring the employer to identify particular alternative  
11 employment.

12 (c)(1) Where the employee has persons conclusively presumed to be dependent upon him  
13 or her, or in fact so dependent, the sum of fifteen dollars (\$15.00) shall be added to the weekly  
14 compensation payable for total incapacity for each person wholly dependent on the employee,  
15 except that the sum of forty dollars (\$40.00) shall be added for those receiving benefits under § 28-  
16 33-12, but in no case shall the aggregate of those amounts exceed eighty percent (80%) of the  
17 average weekly wage of the employee, except that there shall be no limit for those receiving  
18 benefits under § 28-33-12.

19 (2) The dependency allowance shall be in addition to the compensation benefits for total  
20 disability otherwise payable under the provisions of this section. The dependency allowance shall  
21 be increased if the number of persons dependent upon the employee increases during the time that  
22 weekly compensation benefits are being received.

23 (3) For the purposes of this section, the following persons shall be conclusively presumed  
24 to be wholly dependent for support upon an employee:

25 (i) A wife upon a husband with whom she is living at the time of his injury, but only while  
26 she is not working for wages during her spouse's total disability.

27 (ii) A husband upon a wife with whom he is living at the time of her injury, but only while  
28 he is not working for wages during his spouse's total disability.

29 (iii) Children under the age of eighteen (18) years, or over that age but physically or  
30 mentally incapacitated from earning, if living with the employee, or, if the employee is bound or  
31 ordered by law, decree, or order of court, or by any other lawful requirement, to support the  
32 children, although living apart from them. Provided, that the payment of dependency benefits to a  
33 dependent child over the age of eighteen (18) years shall continue as long as that child is  
34 satisfactorily enrolled as a full-time student in an educational institution or an educational facility

1 duly accredited or approved by the appropriate state educational authorities at the time of  
2 enrollment. Those payments shall not be continued beyond the age of twenty-three (23) years.  
3 "Children," within the meaning of this paragraph, also includes any children of the injured  
4 employee conceived but not born at the time of the employee's injury, and the compensation  
5 provided for in this section shall be payable on account of any such children from the date of their  
6 birth.

7 (d) "Dependents," as provided in this section, does not include the spouse of the injured  
8 employee except as provided in paragraphs (c)(3)(i) and (ii) of this section. In all other cases  
9 questions of dependency shall be determined in accordance with the facts as the facts may be at the  
10 time of the injury.

11 (e) The court, or any of its judges, may, in its or his or her discretion, order the insurer or  
12 self-insurer to make payment of the nine dollars (\$9.00) or fifteen dollars (\$15.00) for those  
13 receiving benefits under § 28-33-12 directly to the dependent.

14 (f)(1) Where any employee's incapacity is total and has extended beyond fifty-two (52)  
15 weeks, regardless of the date of injury, payments made to all totally incapacitated employees shall  
16 be increased as of May 10, 1991, and annually on the tenth of May after that as long as the employee  
17 remains totally incapacitated. The increase shall be by an amount equal to the total percentage  
18 increase in annual Consumer Price Index, United States City Average for Urban Wage Earners and  
19 Clerical Workers, as formulated and computed by the Bureau of Labor Statistics of the United  
20 States Department of Labor for the period of March 1 to February 28 each year.

21 (2) If the employee is subsequently found to be only partially incapacitated, the weekly  
22 compensation benefit paid to the employee shall be equal to the payment in effect prior to his or  
23 her most recent cost of living adjustment.

24 (3) "Index" as used in this section refers to the consumer price index, United States City  
25 Average for Urban Wage Earners, Clerical Workers, as that index is formulated and computed by  
26 the Bureau of Labor Statistics of the United States Department of Labor.

27 (4) The May 10, 1991, increase shall be based upon the total percentage increase, if any,  
28 in the annual consumer price index for the period of March 1, 1990, to February 28, 1991.  
29 Thereafter, increases shall be made on May 10 annually, based upon the percentage increase, if  
30 any, in the index for the period March 1 to February 28.

31 (5) The computations in this section shall be made by the director of labor and training and  
32 promulgated to insurers and employers making payments required by this section. Increases shall  
33 be paid by insurers and employers without further order of the court. If payment payable under this  
34 section is not paid within fourteen (14) days after the employer or insurer has been notified or it

1 becomes due, whichever is later, there shall be added to the unpaid payment an amount equal to  
2 twenty percent (20%) of that amount, which shall be paid at the same time as, but in addition to,  
3 the payment.

4 (6) This section applies only to payment of weekly indemnity benefits to employees as  
5 described in subdivision (1) of this subsection, and does not apply to specific compensation  
6 payments for loss of use or disfigurement or payment of dependency benefits or any other benefits  
7 payable under the workers' compensation act.

8 (7) Notwithstanding any other provision of the general law or public laws to the contrary,  
9 any employee of the state of Rhode Island who is receiving workers' compensation benefits for  
10 total incapacity, as a result of brain injury due to a violent assault, on or before July 19, 2005, shall  
11 be entitled to receive the health insurance benefit he or she was entitled to at the time of the injury  
12 for the duration of the total incapacity or until said employee and his or her spouse are both eligible  
13 for Medicare.

14 **28-33-18. Weekly compensation for partial incapacity.**

15 (a) ~~While~~ For all injures on or after January 1, 2022 while the incapacity for work resulting  
16 from the injury is partial, the employer shall pay the injured employee a weekly compensation equal  
17 to ~~seventy five percent (75%)~~ sixty-two (62%) of the difference between his or her ~~spendable~~  
18 average weekly base wages, earnings, or salary before the injury as computed pursuant to the  
19 provisions of § 28-33-20, and his or her ~~spendable~~ weekly wages, earnings, salary, or earnings  
20 capacity after that, but not more than the maximum weekly compensation rate for total incapacity  
21 as set forth in § 28-33-17. For all injuries on or before December 31, 2021, while the incapacity for  
22 work resulting from the injury is partial, the employer shall pay the injured employee a weekly  
23 compensation equal to seventy-five percent (75%) of the difference between his or her spendable  
24 average weekly base wages, earnings, or salary before the injury, as computed pursuant to the  
25 provisions of § 28-33-20, and his or her spendable weekly wages, earnings, salary, or earnings  
26 capacity after that, but not more than the maximum weekly compensation rate for total incapacity,  
27 as set forth in § 28-33-17. The provisions of this section are subject to the provisions of § 28-33-  
28 18.2.

29 (b) For all injuries occurring on or after September 1, 1990, where an employee's condition  
30 has reached maximum medical improvement and the incapacity for work resulting from the injury  
31 is partial, while the incapacity for work resulting from the injury is partial, the employer shall pay  
32 the injured employee a weekly compensation equal to seventy percent (70%) of the weekly  
33 compensation rate as set forth in subsection (a) of this section. The court may, in its discretion, take  
34 into consideration the performance of the employee's duty to actively seek employment in

1 scheduling the implementation of the reduction. The provisions of this subsection are subject to the  
2 provisions of § 28-33-18.2.

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

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

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

12 (iii) For impairment of fifty percent (50%) or less, but greater than twenty-five percent  
13 (25%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less  
14 one point two five (1.25) times the percent of impairment of weekly benefits.

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

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

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

32 SECTION 3. Section 2 of this act shall take effect on January 1, 2022. The remainder of  
33 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 -- WORKERS COMPENSATION --  
BENEFITS

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1           This act would create a new formula for determining a totally and partially disabled injured  
2 worker's weekly benefit entitlement. It also eliminates the current ambiguity in an injured worker's  
3 entitlement, when he or she suffers a recurrence of disability. Finally it creates an enforcement  
4 mechanism for the payment of denial and dismissal settlements, approved by the Workers'  
5 Compensation Court.

6           Section 2 of this act would take effect on January 1, 2022. The remainder of this act would  
7 take effect upon passage.

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