

2010 -- S 2595

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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: Senator Michael J. McCaffrey

Date Introduced: February 11, 2010

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-33-17 of the General Laws in Chapter 28-33 entitled "Workers'
2 Compensation - Benefits" is hereby amended to read as follows:
3 **28-33-17. Weekly compensation for total incapacity -- Permanent total disability --**
4 **Dependents' allowances.** -- (a) (1) While the incapacity for work resulting from the injury is
5 total, the employer shall pay the injured employee a weekly compensation equal to seventy-five
6 percent (75%) of his or her average weekly spendable base wages, earnings, or salary, as
7 computed pursuant to the provisions of section 28-33-20. The amount may not exceed more than
8 sixty percent (60%) of the state average weekly wage of individuals in covered employment
9 under the provisions of the Rhode Island Employment Security Act as computed and established
10 by the Rhode Island department of labor and training, annually, on or before May 31 of each year,
11 under the provisions of section 28-44-6(a). Effective September 1, 1974, the maximum rate for
12 weekly compensation for total disability shall not exceed sixty-six and two-thirds percent (66
13 2/3%) of the state average weekly wage as computed and established under the provisions of
14 section 28-44-6(a). Effective September 1, 1975, the maximum rate for weekly compensation for
15 total disability shall not exceed one hundred percent (100%) of the state average weekly wage as
16 computed and established under the provisions of section 28-44-6(a). Effective September 1,
17 2007, the maximum rate for weekly compensation for total disability shall not exceed one
18 hundred fifteen percent (115%) of the state average weekly wage as computed and established
19 under the provisions of section 28-44-6(a). If the maximum weekly benefit rate is not an exact

1 multiple of one dollar (\$1.00), then the rate shall be raised to the next higher multiple of one
2 dollar (\$1.00).

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

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

15 (ii) Each year, the director shall publish tables of the average weekly wage and seventy-
16 five percent (75%) of spendable earnings that are to be in effect on May 10. These tables shall be
17 conclusive for the purposes of converting an average weekly wage into seventy-five percent
18 (75%) of spendable earnings. In calculating spendable earnings the director shall have discretion
19 to exempt funds assigned to third parties by order of the family court pursuant to section 8-10-3
20 and funds designated for payment of liens pursuant to section 28-33-27 upon submission of
21 supporting evidence. The number of exemptions used to calculate the spendable base wage shall
22 be subject to recalculation any time the employee's exemption status changes to reflect the actual
23 number of exemptions the injured worker has.

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

26 (i) The total and irrecoverable loss of sight in both eyes or the reduction to one-tenth
27 (1/10th) or less of normal vision with glasses;

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

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

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

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

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

34 (2) In all other cases, total disability shall be determined only if, as a result of the injury,

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

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

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

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

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

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

25 (iii) Children under the age of eighteen (18) years, or over that age but physically or
26 mentally incapacitated from earning, if living with the employee, or, if the employee is bound or
27 ordered by law, decree, or order of court, or by any other lawful requirement, to support the
28 children, although living apart from them. Provided, that the payment of dependency benefits to a
29 dependent child over the age of eighteen (18) years shall continue as long as that child is
30 satisfactorily enrolled as a full-time student in an educational institution or an educational facility
31 duly accredited or approved by the appropriate state educational authorities at the time of
32 enrollment. Those payments shall not be continued beyond the age of twenty-three (23) years.
33 "Children," within the meaning of this paragraph, also includes any children of the injured
34 employee conceived but not born at the time of the employee's injury, and the compensation

1 provided for in this section shall be payable on account of any such children from the date of their
2 birth.

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

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

10 (f) (1) Where any employee's incapacity is total and has extended beyond fifty-two (52)
11 weeks, regardless of the date of injury, payments made to all totally incapacitated employees shall
12 be increased as of May 10, 1991, and annually on the tenth of May after that as long as the
13 employee remains totally incapacitated. The increase shall be by an amount equal to the total
14 percentage increase in annual consumer price index, United States city average for urban wage
15 earners and clerical workers, as formulated and computed by the bureau of labor statistics of the
16 United States Department of Labor for the period of March 1 to February 28 each year.

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

20 (3) "Index" as used in this section refers to the consumer price index, United States city
21 average for urban wage earners, clerical workers, as that index is formulated and computed by the
22 Bureau of Labor Statistics of the United States Department of Labor.

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

27 (5) The computations in this section shall be made by the director of labor and training
28 and promulgated to insurers and employers making payments required by this section. Increases
29 shall be paid by insurers and employers without further order of the court. If payment payable
30 under this section is not paid within fourteen (14) days after the employer or insurer has been
31 notified or it becomes due, whichever is later, there shall be added to the unpaid payment an
32 amount equal to twenty percent (20%) of that amount, which shall be paid at the same time as,
33 but in addition to the payment.

34 (6) This section applies only to payment of weekly indemnity benefits to employees as

1 described in subdivision (1) of this subsection, and does not apply to specific compensation
2 payments for loss of use or disfigurement or payment of dependency benefits or any other
3 benefits payable under the Workers' Compensation Act.

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO LABOR AND LABOR RELATIONS

- 1 This act would require the number of exemptions used to calculate the spendable base
- 2 wage to be recalculated at the time the employee's exemption status changes when calculating
- 3 workers' compensation benefits.
- 4 This act would take effect upon passage.

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