

2022 -- S 2977

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION

Introduced By: Senators Ciccone, F Lombardi, McCaffrey, Goodwin, and de la Cruz

Date Introduced: May 19, 2022

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 16-16-20 of the General Laws in Chapter 16-16 entitled "Teachers'
2 Retirement [See Title 16 Chapter 97 - The Rhode Island Board of Education Act]" is hereby
3 amended to read as follows:

4 **16-16-20. Deduction of amounts received from workers' compensation or as damages.**

5 Any amount paid or payable under the provisions of any workers' compensation law,
6 [exclusive of Medicare set aside allocations, specific compensation benefits or any benefits due](#)
7 [pursuant to the terms of a collective bargaining agreement](#) or as the result of any action for damages
8 for personal injuries against the state, on account of the death or disability of a teacher, shall be
9 offset against and payable in lieu of any benefits payable out of funds provided by the state under
10 the provisions of this chapter on account of the death or disability of the teacher. If the value of the
11 total commuted benefits under any workers' compensation law or action is less than the present
12 value on an actuarial basis of the benefits otherwise payable under this chapter, the value of the
13 commuted payments shall be deducted from the present value of the benefits, and the balance
14 thereof shall be payable under the provisions of this chapter.

15 SECTION 2. Sections 28-35-12 and 28-35-28 of the General Laws in Chapter 28-35
16 entitled "Workers' Compensation - Procedure" are hereby amended to read as follows:

17 **28-35-12. Petition for determination of controversy -- Contents and filing.**

18 (a) In all disputes between an employer and employee in regard to compensation or any
19 other obligation established under chapters 29 -- 38 of this title, and when death has resulted from

1 the injury and the dependents of the deceased employee entitled to compensation are, or its
2 apportionment among them is, in dispute, any person in interest, or his or her duly authorized
3 representative, may file with the workers' compensation court a petition, prescribed by the court,
4 setting forth the names and residences of the parties; the facts relating to employment at the time
5 of injury; the cause, extent, and character of the injury; the amount of wages, earnings, or salary
6 received at the time of the injury; and the knowledge of the employer of notice of the occurrence
7 of the injury; and any other facts that may be necessary and proper for the information of the court;
8 and shall state the matter in dispute and the claims of the petitioner with reference to it; provided,
9 that no petition shall be filed within twenty-one (21) days of the date of the injury and no petition
10 regarding any other obligation established under chapters 29 -- 38 of this title shall be filed until
11 twenty-one (21) days after written demand for payment upon the employer or insurer or written
12 notice to the employer or insurer of failure to fulfill the obligation, except that any petition alleging
13 the non-payment or late payment of weekly compensation benefits, attorney's fees, and costs, may
14 be filed after fourteen (14) days from the date the payment is due as set forth in §§ 28-35-42, 28-
15 35-43, and 28-35-20(c). All demands seeking payment of bills for medical services rendered shall
16 include reference to a claim number or a legible copy of the agreement, order, and/or decree, if
17 appropriate, establishing liability. Medical bills for services ordered paid by decree or pretrial order
18 shall be paid within fourteen (14) days of the entry of the decree or order. In the event that the bills
19 are not paid within the fourteen-day (14) period, a petition may be filed to enforce said order or
20 decree without any additional written notice to the employer or insurer.

21 (b)(1) If one or more claims are filed for an injury and there are two (2) or more insurers,
22 any one of which may be held to be liable to pay compensation, and the judge determines that the
23 injured employee would be entitled to receive compensation but for the existence of a controversy
24 as to which one of the insurers is liable to pay compensation, one of the insurers shall be selected
25 by a judge of the workers' compensation court, to pay to the injured employee the compensation,
26 pending a final decision of the workers' compensation court as to the matter in controversy, and
27 that decision shall require that the amount of compensation paid shall be deducted from the award
28 if made against another insurer and shall be paid by that other insurer to the insurer selected by the
29 judge.

30 (2) The workers' compensation court shall award compensation, costs, and attorney's fees
31 in its discretion if one of the insurers is held to be liable following the hearing.

32 (3) In the event multiple attorneys have provided representation to an employee, in
33 connection with an injury claim and an attorney's lien has been filed with the court or the insurance
34 carrier, and there is dispute between the attorneys over the equitable division of any legal fee,

1 awarded by the court for legal services rendered on behalf of the employee; the court, upon petition
2 by any of the aggrieved attorneys, shall assign the legal fee dispute to the workers' compensation
3 court's mediation program, in accordance with the rules and procedures established by the court.
4 The employer or its insurer or its claim administrator shall not be joined as a party to the petition.
5 In the event the dispute is not resolved in mediation, the mediator shall report to the chief judge of
6 the court, that the dispute has not resolved and the petition shall be dismissed, with no further action
7 by the court. Nothing herein shall preclude any party or attorney from pursuing any action
8 otherwise available.

9 (c) If any determination of the workers' compensation court entitles an employee to
10 retroactive payment of weekly benefits, the court shall award to the employee interest at the rate
11 per annum provided in § 9-21-10 on that retroactive weekly payment from six (6) months
12 subsequent to the date that the employee first filed a petition for benefits to the time when that
13 retroactive payment is actually made. If the proceedings are unduly delayed by or at the request of
14 the employee or his or her attorney, the judge may reduce or eliminate interest on retroactive
15 payment; provided, that the provisions of this section as they relate to interest shall apply only to
16 petitions filed on or after July 1, 1984.

17 (d) Any fine, penalty, or interest expense incurred by an insurer under this section may not
18 be used as an expense for the purpose of seeking a rate increase before the department of business
19 regulation.

20 **28-35-28. Appeal to appellate division.**

21 (a) Any person aggrieved by the entry of a decree by a trial judge may appeal to the
22 appellate division established pursuant to this section by filing with the court within five (5) days
23 of the date of the entry of a decree, exclusive of Saturdays, Sundays, and holidays, a claim of appeal
24 and, subject to the rules of practice of the court, by filing a request for a transcript of the testimony
25 and ruling or any part thereof desired. Upon a showing of excusable neglect, the trial judge who
26 entered the decree, may extend the time for filing the claim of appeal by any party, for a period not
27 to exceed thirty (30) days from the expiration of the original time prescribed by this section. The
28 request for extension shall be made by motion directed to the trial judge with such notice as the
29 court shall deem appropriate. Such an extension may be granted, before or after the time otherwise
30 prescribed by this section. Within any time that a judge shall fix, either by an original fixing or
31 otherwise, the appellant shall file with the court reasons of appeal stating specifically all matters
32 determined adversely to him or her which he or she desires to appeal, together with so much of the
33 transcript of testimony and rulings as he or she deems pertinent, and within ten (10) days after that
34 the parties may file with the court those briefs and memoranda that they may desire concerning the

1 appeal. The chief judge shall appoint appellate panels of three (3) members of the court to hear any
2 claim of appeal and the decision of the appellate panel shall be binding on the court. The three (3)
3 members of the appellate panel shall immediately review the decree upon the record of the case
4 and shall file a decision pursuant to the law and the fair preponderance of the evidence within ten
5 (10) days of the expiration of the time within which the parties may file briefs and memoranda.
6 Upon consideration of the appeal, the appellate panel shall affirm, reverse, or modify the decree
7 appealed from, and may itself take any further proceedings that are just, or may remand the matter
8 to the trial judge for further consideration of any factual issue that the appellate division may raise,
9 including the taking of additional evidence or testimony by the trial judge. It shall be within the
10 prerogative of the appellate panel to remand a matter to the trial judge. If the decision requires the
11 entry of a new decree, notice shall be given the parties, and the new decree shall be entered in the
12 same manner as the original decree, but if the decision of two (2) appellate panel judges does not
13 require the entry of a new decree, the decree shall be affirmed. Any member of the appellate panel
14 may, for cause, disqualify himself or herself from hearing any appeal that may come before the
15 appellate panel.

16 (b) The findings of the trial judge on factual matters shall be final unless an appellate panel
17 finds them to be clearly erroneous. The court may award costs, including reasonable attorney's fees,
18 to the prevailing party when the appellate panel finds there was complete absence of a justiciable
19 issue of either law or fact.

20 SECTION 3. Section 28-53-7 of the General Laws in Chapter 28-53 entitled "Rhode Island
21 Uninsured Protection Fund" is hereby amended to read as follows:

22 **28-53-7. Payments to employees of uninsured employers.**

23 (a) Where it is determined that the employee was injured in the course of employment
24 while working for an employer who fails to maintain a policy of workers' compensation insurance
25 as required by § 28-36-1 et seq., in accordance with the provisions of this chapter, the uninsured
26 protection fund is authorized to pay the benefits to which the injured employee would be entitled
27 pursuant to chapters 29 -- 38 of this title subject to the limitations set forth herein.

28 (b) The workers' compensation court shall hear all petitions for payment from the fund
29 pursuant to § 28-30-1 et seq.; provided, however, that any petition for the commencement of
30 compensation benefits filed against the uninsured protection fund shall be accompanied or preceded
31 by a separate petition for the commencement of compensation benefits timely filed against the
32 uninsured unless the petition to be filed against the uninsured employer is otherwise enjoined or
33 prevented by law.

34 (c) Where an employee is deemed to be entitled to benefits from the uninsured protection

1 fund, the fund shall pay benefits for incapacity as provided pursuant to chapters 29 -- 38 of this title
2 except that the employee shall not be entitled to receive benefits for medical expenses pursuant to
3 the provisions of § 28-33-5 or loss of function and disfigurement pursuant to the provisions of §
4 28-33-19 from the uninsured protection fund. Nothing herein shall affect an employee's right to
5 otherwise recover such benefits for medical expenses, loss of function, and disfigurement from an
6 uninsured employer.

7 (d) The fund shall pay costs, counsel, and witness fees, as provided in § 28-35-32, to any
8 employee who successfully prosecutes any petitions for payment; petitions to amend a pretrial
9 order; and all other employee petitions; and to employees who successfully defend, in whole or in
10 part, proceedings seeking to reduce or terminate any and all payments; provided, however, that the
11 attorney's fees awarded to counsel who represent the employee in petitions for lump-sum
12 commutation filed pursuant to § 28-33-25, or in the settlement of disputed cases pursuant to § 28-
13 33-25.1, shall be limited to the maximum amount paid to counsel who serve as court-appointed
14 attorneys in workers' compensation proceedings as established by rule or order of the Rhode Island
15 supreme court. Any payment ordered by the court or due under this section shall not be subject to
16 liens set forth in § 28-33-27(b), nor shall such payments be assignable or subject to assignment in
17 any way.

18 (e) In the event that the uninsured employer makes payment of any monies to the employee
19 to compensate the employee in any way for the alleged work injury, the fund may be entitled to a
20 credit for all such monies received by, or on behalf of, the employee, including, but not limited to,
21 monies paid to the employee by any other party for the employee's lost wages against any future
22 benefits payable directly to the employee. The fund shall be entitled to full reimbursement from the
23 uninsured employer for any and all payments made by the fund to the employee, as well as all costs,
24 counsel, and witness fees paid out by the fund in connection with any claim and/or petition, plus
25 any and all costs and attorney's fees associated with collection and reimbursement of the fund.

26 [\(f\) All the rights and obligations of § 28-35-58 are preserved to the benefit of the employee](#)
27 [and the fund.](#)

28 ~~(g)~~ This section shall apply to injuries that occur on or after September 1, 2019.

29 SECTION 4. 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

1 This act would subtract Medicare set aside allocations, specific compensation benefits and
2 collective bargaining agreement benefits from the list of deductions/offsets from teacher death or
3 disability benefits, would establish an additional option to resolve a dispute over the apportionment
4 of legal fees, between multiple attorneys that have represented the same injured employee, would
5 grant a workers' compensation trial judge, upon the showing of excusable neglect the power to
6 extend the appeal period for their decision, up to an additional thirty (30) days, and would expressly
7 preserve the rights of insured employees, of an uninsured employer, the right to pursue a third-
8 party claim.

9 This act would take effect upon passage.

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