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LC01069

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

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

Introduced By: Senators Ruggerio, Goodwin, Jabour, McCaffrey, and Lanzi

Date Introduced: February 10, 2011

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 is 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 is averaged over the length of employment but

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

1 computing the average weekly wages earned subsequent to the first injury, the time worked and
2 wages earned prior to that injury are excluded.

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

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

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

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

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, the sum paid is not
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 does not preclude
15 compensation for a later injury or for death; but in determining the compensation for the later
16 injury or death, the average weekly wage is a 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 is derived according to, and subject to, the limitations of the provisions of this
19 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 are 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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