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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - WORKERS COMPENSATION

Introduced By: Representatives Fierro, Segal, Carnevale, Gallison, and Handy

Date Introduced: February 04, 2010

Referred To: House Labor

It is enacted by the General Assembly as follows:

SECTION 1. Sections 28-29-2 and 28-29-6.1 of the General Laws in Chapter 28-29 entitled "Workers' Compensation - General Provisions" are hereby amended to read as follows:

28-29-2. Definitions. -- In chapters 29 -- 38 of this title, unless the context otherwise requires:

(1) "Department" means the department of labor and training.

(2) "Director" means the director of labor and training or his or her designee unless specifically stated otherwise.

(3) (i) "Earnings capacity" means the weekly straight time earnings which an employee could receive if the employee accepted an actual offer of suitable alternative employment. Earnings capacity can also be established by the court based on evidence of ability to earn, including, but not limited to, a determination of the degree of functional impairment and/or disability, that an employee is capable of employment. The court may, in its discretion, take into consideration the performance of the employee's duty to actively seek employment in scheduling the implementation of the reduction. The employer need not identify particular employment before the court can direct an earnings capacity adjustment. In the event that an employee returns to light duty employment while partially disabled, an earnings capacity shall not be set based upon actual wages earned until the employee has successfully worked at light duty for a period of at least thirteen (13) weeks.

(ii) As used under the provisions of this title, "functional impairment" means an

anatomical or functional abnormality existing after the date of maximum medical improvement as determined by a medically or scientifically demonstrable finding and based upon the most recent edition of the American Medical Association's Guide to the Evaluation of Permanent Impairment or comparable publications of the American Medical Association.

(iii) In the event that an employee returns to employment at an average weekly wage equal to the employee's pre-injury earnings exclusive of overtime, the employee will be presumed to have regained his/her earning capacity.

(4) "Employee" means any person who has entered into the employment of or works under contract of service or apprenticeship with any employer, except that in the case of a city or town other than the city of Providence it shall only mean that class or those classes of employees as may be designated by a city, town, or regional school district in a manner provided in this chapter to receive compensation under chapters 29 -- 38 of this title. Any person employed by the state of Rhode Island, except for sworn employees of the Rhode Island State Police, who is otherwise entitled to the benefits of chapter 19 of title 45 shall be subject to the provisions of chapters 29 -- 38 of this title for all case management procedures and dispute resolution for all benefits. The term "employee" does not include any individual who is a shareholder or director in a corporation, general or limited partners in a general partnership, a registered limited liability partnership, a limited partnership, or partners in a registered limited liability limited partnership, or any individual who is a member in a limited liability company. These exclusions do not apply to shareholders, directors and members who have entered into the employment of or who work under a contract of service or apprenticeship within a corporation or a limited liability company. The term "employee" also does not include a sole proprietor, independent contractor, or a person whose employment is of a casual nature, and who is employed other than for the purpose of the employer's trade or business, or a person whose services are voluntary or who performs charitable acts, nor shall it include the members of the regularly organized fire and police departments of any town or city. Whenever a contractor has contracted with the state, a city, town, or regional school district any person employed by that contractor in work under contract shall not be deemed an employee of the state, city, town, or regional school district as the case may be. Any person who on or after January 1, 1999, was an employee and became a corporate officer shall remain an employee, for purposes of these chapters, unless and until coverage under this act is waived pursuant to subsection 28-29-8(b) or section 28-29-17. Any person who is appointed a corporate officer between January 1, 1999 and December 31, 2001, and was not previously an employee of the corporation, will not be considered an employee, for purposes of these chapters, unless that corporate officer has filed a notice pursuant to subsection 28-29-19(b). In the case of a

person whose services are voluntary or who performs charitable acts, any benefit received, in the form of monetary remuneration or otherwise, shall be reportable to the appropriate taxation authority but shall not be deemed to be wages earned under contract of hire for purposes of qualifying for benefits under chapters 29 -- 38 of this title. Any reference to an employee who had been injured shall, where the employee is dead, include a reference to his or her dependents as defined in this section, or to his or her legal representatives, or, where he or she is a minor or incompetent, to his or her conservator or guardian. A "seasonal occupation" means those occupations in which work is performed on a seasonal basis of not more than sixteen (16) weeks.

(5) "Employer" includes any person, partnership, corporation, or voluntary association, and the legal representative of a deceased employer; it includes the state, and the city of Providence. It also includes each city, town, and regional school district in the state that votes or accepts the provisions of chapters 29 -- 38 of this title in the manner provided in this chapter.

(6) "General or special employer":

(i) "General employer" includes but is not limited to temporary help companies and employee leasing companies and means a person who for consideration and as the regular course of its business supplies an employee with or without vehicle to another person.

(ii) "Special employer" means a person who contracts for services with a general employer for the use of an employee, a vehicle, or both.

(iii) Whenever there is a general employer and special employer wherein the general employer supplies to the special employer an employee and the general employer pays or is obligated to pay the wages or salaries of the supplied employee, then, notwithstanding the fact that direction and control is in the special employer and not the general employer, the general employer, if it is subject to the provisions of the Workers' Compensation Act or has accepted that Act, shall be deemed to be the employer as set forth in subdivision (5) of this section and both the general and special employer shall be the employer for purposes of sections 28-29-17 and 28-29-18. However, the special employer shall not be deemed to be the employer for purposes of section 28-29-20.

(iv) Effective January 1, 2003, whenever a general employer enters into a contract or arrangement with a special employer to supply an employee or employees for work, the special employer shall require an insurer generated insurance coverage certification, on a form prescribed by the department, demonstrating Rhode Island workers' compensation and employer's liability coverage evidencing that the general employer carries workers' compensation insurance with that insurer with no indebtedness for its employees for the term of the contract or arrangement. In the event that the special employer fails to obtain and maintain at policy renewal and thereafter this

insurer generated insurance coverage certification demonstrating Rhode Island workers' compensation and employer's liability coverage from the general employer, the special employer is deemed to be the employer pursuant to the provisions of this section. Upon the cancellation or failure to renew, the insurer having written the workers' compensation and employer's liability policy shall notify the certificate holders and the department of the cancellation or failure to renew and upon notice, the certificate holders shall be deemed to be the employer for the term of the contract or arrangement unless or until a new certification is obtained.

(7) (i) "Injury" means and refers to personal injury to an employee arising out of and in the course of his or her employment, connected and referable to the employment.

(ii) An injury to an employee while voluntarily participating in a private, group, or employer-sponsored carpool, vanpool, commuter bus service, or other rideshare program, having as its sole purpose the mass transportation of employees to and from work shall not be deemed to have arisen out of and in the course of employment. Nothing in the foregoing provision shall be held to deny benefits under chapters 29 -- 38 and chapter 47 of this title to employees such as drivers, mechanics, and others who receive remuneration for their participation in the rideshare program. Provided, that the foregoing provision shall not bar the right of an employee to recover against an employer and/or driver for tortious misconduct.

(8) "Leased employee" is an employee leased to a special employer by a labor-leasing firm under an agreement between the special employer and the labor-leasing firm, to perform duties related to the conduct of the special employer's business. "Leased employee" does not include a "temporary employee".

~~(8)~~(9) "Maximum medical improvement" means a point in time when any medically determinable physical or mental impairment as a result of injury has become stable and when no further treatment is reasonably expected to materially improve the condition. Neither the need for future medical maintenance nor the possibility of improvement or deterioration resulting from the passage of time and not from the ordinary course of the disabling condition, nor the continuation of a pre-existing condition precludes a finding of maximum medical improvement. A finding of maximum medical improvement by the workers' compensation court may be reviewed only where it is established that an employee's condition has substantially deteriorated or improved.

~~(9)~~(10) "Physician" means medical doctor, surgeon, dentist, licensed psychologist, chiropractor, osteopath, podiatrist, or optometrist, as the case may be.

~~(10)~~(11) "Suitable alternative employment" means employment or an actual offer of employment which the employee is physically able to perform and will not exacerbate the employee's health condition and which bears a reasonable relationship to the employee's

qualifications, background, education, and training. The employee's age alone shall not be considered in determining the suitableness of the alternative employment.

(12) "Temporary Employee" means an employee who is furnished to a special employer to substitute for a "permanent employee" or for a "leased employee" as a defined in this section, or to meet seasonal or short-term workload conditions of the special employer.

~~(11)~~(13) "Independent contractor" means a person who has filed a notice of designation as independent contractor with the director pursuant to section 28-29-17.1 or as otherwise found by the workers' compensation court.

28-29-6.1. Secondary provision of workers' compensation insurance. – (a) Whenever a general contractor or a construction manager enters into a contract with a subcontractor for work to be performed in Rhode Island, the general contractor or construction manager shall at all times require written documentation evidencing that the subcontractor carries workers' compensation insurance with no indebtedness for its employees for the term of the contract or is an independent contractor pursuant to the provisions of section 28-29-17.1. In the event that the general contractor or construction manager fails to obtain ~~the written documentation~~ and maintain at policy renewal this insurer generated insurance coverage certification demonstrating Rhode Island worker's compensation and employer's liability coverage from the subcontractor, the general contractor or construction manager shall be deemed to be the employer pursuant to provisions of section 28-29-2. Upon the cancellation or failure to renew, the insurer having written the workers' compensation and employer's liability policy shall notify the certificate holders and the division of workers compensation of the cancellation or failure to renew, and thereafter the certificate holders shall be deemed to be the employer for the duration of the contract or arrangement unless or until a new certificate has been obtained.

(b) For the purposes of this section, "construction manager" means an individual corporation, partnership, or joint venture or other legal entity responsible for supervising and controlling all aspects of construction work to be performed on the construction project, as designated in the project documents, in addition to the possibility of performing some of the construction services itself. For the purposes of this section, the construction manager need have no contractual involvement with any of the parties to the construction project other than the owner, or may contract directly with the trade contractors pursuant to its agreement with the owner.

(c) This section only applies to a general contractor, subcontractor, or construction manager deemed an employer subject to the provisions of Chapters 29 -- 38 of this title, as provided in section 28-29-6.

(d) Whenever the workers' compensation insurance carrier is obligated to pay workers' compensation benefits to the employee of an uninsured subcontractor, the workers' compensation insurance carrier shall have a complete right of indemnification to the extent benefits are paid against either the uninsured subcontractor, uninsured general contractor or uninsured construction manager.

SECTION 2. Section 28-33-8, 28-33-19 and 28-33-34.1 of the General Laws in Chapter 28-33 entitled "Workers' Compensation - Benefits" are hereby amended to read as follows:

28-33-8. Employee's choice of physician, dentist, or hospital -- Payment of charges -- Physician reporting schedule. -- (a) (1) An injured employee shall have freedom of choice to obtain health care, diagnosis, and treatment from any qualified health care provider initially. The initial health care provider of record may, without prior approval, refer the injured employee to any qualified specialist for independent consultation or assessment, or specified treatment. If the insurer or self-insured employer has a preferred provider network approved and kept on record by the medical advisory board, any change by the employee from the initial health care provider of record shall only be to a health care provider listed in the approved preferred provider network. If the employee seeks to change to a health care provider not in the approved preferred provider network, the employee must obtain the approval of the insurer or self-insured employer. Nothing contained in this section shall prevent the treatment, care, or rehabilitation of an employee by more than one physician, dentist, or hospital. The employee's first visit to any facility providing emergency care or to a physician or medical facility under contract with or agreement with the employer or insurer to provide priority care shall not constitute the employee's initial choice to obtain health care, diagnosis or treatment.

(2) In addition to the treatment of qualified health care providers, the employee shall have the freedom to obtain a rehabilitation evaluation by a rehabilitation counselor certified by the director pursuant to section 28-33-41 in cases where the employee has received compensation for a period of more than three (3) months, and the employer shall pay the reasonable fees incurred by the rehabilitation counselor for the initial assessment.

(b) Within three (3) days of an initial visit following an injury, the health care provider shall provide to the insurer or self-insured employer, and the employee and his or her attorney a notification of compensable injury form to be approved by the administrator of the medical advisory board. Within three (3) days of the injured employee's release or discharge, return to work, and/or recovery from an injury covered by chapters 29 -- 38 of this title, the health care provider shall provide a notice of release to the insurer or self-insured employer and the employee and his or her attorney on a form approved by the division. A twenty dollar ($20.00) fee may be

charged by the health care provider to the insurer or self-insured employer for the notification of compensable injury forms or notice of release forms or for affidavits filed pursuant to subsection (c) of this section, but only if filed in a timely manner. No claim for care or treatment by a physician, dentist, or hospitalchosen by an employee shall be valid and enforceable as against his or her employer, the employer's insurer, or the employee, unless the physician, dentist, or hospital gives written notice of the employee's choice to the employer/insurance carrier within fifteen (15) days after the beginning of the services or treatment. The health care provider shall in writing present to the employer or insurance carrier a final itemized bill for all unpaid services or treatment within three (3) months after the conclusion of the treatment. The employee shall not be personally liable to pay any physician, dentist, or hospital bills in cases where the physician, dentist, or hospital has forfeited the right to be paid by the employer or insurance carrier because of noncompliance with this section.

(c) (1) ~~Every six (6) weeks,~~ At six (6) weeks from the date of injury, then every twelve (12) weeks thereafter, until maximum medical improvement, any qualified physician or other health care professional providing medical care or treatment to any person for an injury covered by chapters 29 -- 38 of this title shall file an itemized bill and an affidavit with the insurer, the employee and his or her attorney, and the medical advisory board. A ten percent (10%) discount may be taken on the itemized bill affidavits not filed in a timely manner and received by the insurer one week or more late. The affidavit shall be on a form designed and provided by the administrator of the medical advisory board and shall state:

~~(i) The nature of the injury being treated;~~

~~(ii)~~ (i) The type of medical treatment provided to date, including type and frequency of treatment(s);

~~(iii)~~ (ii) Anticipated further treatment including type, frequency, and duration of treatment(s), whether or not maximum medical improvement has been reached ~~or when it is expected to be reached~~, and the anticipated date of discharge;

~~(iv)~~ (iii) Whether the employee can return to the former position of employment or is capable of other work, specifying work restrictions and work capabilities ~~and the degree of functional impairment and/or disability~~ of the employee;

~~(v) Any ownership interest in any ancillary facility to which the patient has been referred for treatment of a compensable injury.~~

(2) The affidavit shall be admissible as an exhibit of the workers' compensation court with or without the appearance of the affiant.

(d) "Itemized bill", as referred to in this section, means a statement of charges, on a form

HCFA 1500 or other form suitable to the insurer, which includes, but is not limited to, an enumeration of specific types of care provided, facilities or equipment used, services rendered, and appliances or medicines prescribed, for purposes of identifying the treatment given the employee with respect to his or her injury.

(e) (1) The treating physician shall furnish to the employee, or to his or her legal representative, a copy of his or her medical report within ten (10) days of the examination date.

(2) The treating physician shall notify the employer, and the employee and his or her attorney immediately when an employee is able to return to full or modified work.

(3) There shall be no charge for a health record when that health record is necessary to support any appeal or claim under the Workers' Compensation Act section 23-17-19.1(16).

(f) (1) Compensation for medical expenses and other services under section 28-33-5, 28-33-7 or 28-33-8 is due and payable within twenty-one (21) days from the date a request is made for payment of these expenses by the provider of the medical services. In the event payment is not made within twenty-one (21) days from the date a request is made for payment, the provider of medical services may add, and the insurer or self-insurer shall pay, interest at the per annum rate as provided in section 9-21-10 on the amount due. The employee or the medical provider may file a petition with the administrator of the workers' compensation court which petition shall follow the procedure as authorized in chapter 35 of this title.

(2) The twenty-one (21) day period in subdivision (1) of this subsection shall begin on the date the insurer receives a request with appropriate documentation required to determine whether the claim is compensable and the payment requested is due.

28-33-19. Additional compensation for specific injuries. -- (a) (1) In case of the following specified injuries there shall be paid in addition to all other compensation provided for in chapters 29 to 38 of this title a weekly payment equal to one-half (1/2) of the average weekly earnings of the injured employee, but in no case more than ~~ninety dollars ($90.00)~~ one hundred eighty dollars ($180.00) nor less than ~~forty five dollars ($45.00)~~ ninety dollars ($90.00) per week. Payment made under this section shall be made in a one time payment unless the parties otherwise agree. Payment shall be mailed within fourteen (14) days of the entry of a decree, order, or agreement of the parties:

(i) For the loss by severance of both hands at or above the wrist, or for the loss of the arm at or above the elbow or for the loss of the leg at or above the knee, or both feet at or above the ankle, or of one hand and one foot, or the entire and irrecoverable loss of the sight of both eyes, or the reduction to one-tenth (1/10) or less of normal vision with glasses, for a period of three hundred twelve (312) weeks; provided, that for the purpose of this chapter the Snellen chart

reading 20/200 shall equal one-tenth (1/10) of normal vision or a reduction of ninety percent (90%) of the vision. Additionally, any loss of visual performance including, but not limited to, loss of binocular vision, other than direct visual acuity may be considered in evaluating eye loss;

(ii) For the loss by severance of either arm at or above the elbow, or of either leg at or above the knee, for a period of three hundred twelve (312) weeks;

(iii) For the loss by severance of either hand at or above the wrist for a period of two hundred forty-four (244) weeks;

(iv) For the entire and irrecoverable loss of sight of either eye, or the reduction to one-tenth (1/10) or less of normal vision with glasses, or for loss of binocular vision for a period of one hundred sixty (160) weeks;

(v) For the loss by severance of either foot at or above the ankle, for a period of two hundred five (205) weeks;

(vi) For the loss by severance of the entire distal phalange of either thumb for a period of thirty-five (35) weeks; and for the loss by severance at or above the second joint of either thumb, for a period of seventy-five (75) weeks;

(vii) For the loss by severance of one phalange of either index finger, for a period of twenty-five (25) weeks; for the loss by severance of at least two (2) phalanges of either index finger, for a period of thirty-two (32) weeks; for the loss by severance of at least three (3) phalanges of either index finger, for a period of forty-six (46) weeks;

(viii) For the loss by severance of one phalange of the second finger of either hand, for a period of sixteen (16) weeks; for the loss by severance of two (2) phalanges of the second finger of either hand, for a period of twenty-two (22) weeks; for the loss by severance of three (3) phalanges of the second finger on either hand, for a period of thirty (30) weeks;

(ix) For the loss by severance of one phalange of the third finger of either hand, for a period of twelve (12) weeks; for the loss by severance of two (2) phalanges of the third finger of either hand, for a period of eighteen (18) weeks; for the loss by severance of three (3) phalanges of a third finger of either hand, for a period of twenty-five (25) weeks;

(x) For the loss by severance of one phalange of the fourth finger of either hand, for a period of ten (10) weeks; for the loss by severance of two (2) phalanges of the fourth finger of either hand, for a period of fourteen (14) weeks; for the loss by severance of three (3) phalanges of a fourth finger of either hand, for a period of twenty (20) weeks;

(xi) For the loss by severance of one phalange of the big toe on either foot, for a period of twenty (20) weeks; for the loss by severance of two (2) phalanges of the big toe of either foot, for a period of thirty-eight (38) weeks; for the loss by severance at or above the distal joint of any

other toe than the big toe, for a period of ten (10) weeks for each such toe;

~~(xii) For the complete loss of hearing of either ear sixty (60) weeks; for the complete loss of hearing of both ears two hundred (200) weeks; provided, that the loss shall be due to external trauma.~~

(2) Where any bodily member or portion of it has been rendered permanently stiff or useless, compensation in accordance with the above schedule shall be paid as if the member or portion of it had been completely severed; provided, that if the stiffness or uselessness is less than total, then compensation shall be paid for that period of weeks in proportion to the applicable period where the member or portion of it has been completely severed as the instant percentage of stiffness or uselessness bears to the total stiffness or total uselessness of the bodily members or portion of them.

(3) In case of the following specified injuries there shall be paid in addition to all other compensation provided for in chapters 29 -- 38 under this title a weekly payment equal to one-half (1/2) of the average weekly earnings of the injured employee, but in no case more than ~~ninety dollars ($90.00)~~ one hundred eighty dollars ($180.00) nor less than ~~forty-five dollars ($45.00)~~ ninety dollars ($90.00) per week. Payment under this subsection shall be made in a one time payment unless the parties otherwise agree. Payment shall be mailed within fourteen (14) days of the entry of a decree, order, or agreement of the parties:

(i) For partial loss by severance for any of the injuries specified in paragraphs(1)(i) -- (1)(xii) of this subsection, proportionate benefits shall be paid for the period of time that the partial loss by severance bears to the total loss by severance.

(ii) For permanent disfigurement of the body the number of weeks may not exceed five hundred (500) weeks, which sum shall be payable in a one time payment within fourteen (14) days of the entry of a decree, order, or agreement of the parties in addition to all other sums under this section wherever it is applicable.

(4) (i) Loss of hearing due to industrial noise is recognized as an occupational disease for purposes of chapters 29 -- 38 of this title and occupational deafness is defined to be a loss of hearing in one or both ears due to prolonged exposure to harmful noise in employment. Harmful noise means sound capable of producing occupational deafness.

(ii) Hearing loss shall be evaluated pursuant to protocols established by the workers' compensation medical advisory board. All treatment consistent with this subsection shall be consistent with the protocols established by the workers' compensation medical advisory board subject to section 28-33-5.

(iii) If the employer has conducted baseline screenings within one (1) year of exposure to

harmful noise to evaluate the extent of an employee's pre-existing hearing loss, the causative factor shall be apportioned based on the employee's pre-existing hearing loss and subsequent occupational hearing loss, and the compensation payable to the employee shall only be that portion of the compensation related to the present work-related exposure.

(iv) There shall be payable as permanent partial disability for total occupational deafness of one ear, seventy-five (75) weeks of compensation; for total occupational deafness of both ears, two hundred forty-four (244) weeks of compensation; for partial occupational deafness in one or both ears, compensation shall be paid for any periods that are proportionate to the relation which the hearing loss bears to the amount provided in this subdivision for total loss of hearing in one or both ears, as the case may be. For the complete loss of hearing for either ear due to external trauma or by other mechanism, acuity loss shall be paid pursuant to this subsection. ~~Acuity hearing loss related to a single event, usually trauma (e.g., in association with a basal skull fracture) or by other mechanism, shall be paid pursuant to this subsection.~~

(v) No benefits shall be granted for tinnitus, psychogenic hearing loss, congenital hearing loss, recruitment or hearing loss above three thousand (3,000) hertz.

(vi) The provisions of this subsection and the amendments insofar as applicable to hearing loss shall be operative as to any occupational hearing loss that occurs on or after September 1, 2003, except for acuity hearing loss related to a single event which shall become effective upon passage.

(vii) If previous hearing loss, whether occupational or not, is established by an audiometric examination or other competent evidence, whether or not the employee was exposed to assessable noise exposure within one year preceding the test, the employer is not liable for the previous loss, nor is the employer liable for a loss for which compensation has previously been paid or awarded. The employer is liable only for the difference between the percent of occupational hearing loss determined as of the date of the audiometric examination conducted by a certified audiometric technician using an audiometer which meets the specifications established by the American National Standards Institute (ANSI 3.6-1969, ri973) used to determine occupational hearing loss and the percentage of loss established by the baseline audiometric examination. An amount paid to an employee for occupational hearing loss by any other employer shall be credited against compensation payable by the subject employer for the hearing loss. The employee shall not receive in the aggregate greater compensation from all employers for occupational hearing loss than that provided in this section for total occupational hearing loss. A payment shall not be paid to an employee unless the employee has worked in excessive noise exposure employment for a total period of at least one hundred eighty (180) days for the

employer for whom compensation is claimed.

(viii) No claim for occupational deafness may be filed until six (6) months separation from the type of noisy work for the last employer in whose employment the employee was at any time during the employment exposed to harmful noise.

(ix) The total compensation due for hearing loss is recovered from the employer who last employed the employee in whose employment the employee was last exposed to harmful noise and the insurance carrier, if any, on the risk when the employee was last so exposed, and if the occupational hearing loss was contracted while the employee was in the employment of a prior employer, and there was no baseline testing by the last employer, the employer and insurance carrier which is made liable for the total compensation as provided by this section may petition the worker's compensation court for an apportionment of the compensation among the several employers which since the contraction of the hearing loss have employed the employee in a noisy environment.

(b) Where payments are required to be made under more than one clause of this section, payments shall be made in a one time payment unless the parties otherwise agree. Payment shall be mailed within fourteen (14) days of the entry of a decree, order, or agreement of the parties.

(c) Payments pursuant to this section, except paragraph (a)(3)(ii) of this section, shall be made only after an employee's condition as relates to loss of use has reached maximum medical improvement as defined in section 28-29-2(8) and as found pursuant to section 28-33-18(b).

28-33-34.1. Schedule of medical review. -- (a) On or about twenty-six (26) weeks from the date of a compensable injury, any person obtaining incapacity benefits ~~shall~~ may be examined and their diagnosis and treatment reviewed by a comprehensive independent health care review team or an impartial medical examiner. The comprehensive independent health care review team or impartial medical examiner shall be selected through a mechanism to be established by the administrator of the medical advisory board. The results of the examination and review shall be provided to the employee and the insurer or self-insured employer within fourteen (14) days of the examination and a copy shall be filed with the medical advisory board. The comprehensive independent health care review team and/or impartial medical examiner shall review the treating physician's findings and diagnosis and make its own findings of the extent and nature of the claimed disability, the degree of functional impairment and/or disability, the expectation of further medical improvement, any further medical care, treatment, and/or rehabilitation services that may be required to reach maximum medical improvement, type(s) of work that can be performed within existing physical capacity, the degree of disability expected at maximum medical improvement, whether the employee can return to the former position of employment,

and compliance of the treating physician with protocols and standards of medical care established by the medical advisory board. The report shall be admissible as the court's exhibit. A party may be permitted to cross-examine the author(s) of the report with leave of the court.

(b) On or about thirteen (13) weeks after any examination under this section or section 28-33-35, a comprehensive independent health care review team or impartial medical examiner shall perform a similar review. The same comprehensive independent health care review team or impartial medical examiner may not perform more than two (2) consecutive reviews on a particular employee.

~~(c) The medical reviews required by this section may be satisfied by summary review if:~~

~~(1) The employee is receiving benefits for total incapacity, and the employee's condition is so severe or permanent that examination and review is clearly inappropriate or unnecessary;~~

~~(2) The employee's return to work or a suspension of benefits for other reasons is imminent;~~

~~(3) The employee is under and following a rehabilitation program approved by the director of labor and training;~~

~~(4) The employee's condition has been previously reviewed by the attending physician, comprehensive independent health care review team, or impartial medical examiner, or in an approved rehabilitation program report, and was then determined to be and remains stable and at maximum medical improvement, and the employee has had an earnings capacity adjustment appropriate to his or her present level of earnings capacity; or~~

~~(5) The employee is receiving weekly compensation benefits from a self insured employer that has filed and received approval of a request for exemption from the provisions of this section.~~

~~(d) Failure to appear for examination under this section shall be grounds for suspension or termination of benefits unless justified by good cause. Residence outside the state does not, by itself, constitute good cause for failure to appear.~~

SECTION 3. Section 28-41-6 of the General Laws in Chapter 28-41 entitled "Temporary Disability Insurance - Benefits" is hereby amended to read as follows:

28-41-6. Effect on waiting period credit and benefits of receipt of workers' compensation payments. -- (a) No individual shall be entitled to receive waiting period credit benefits or dependents' allowances with respect to which benefits are paid or payable to that individual under any workers' compensation law of this state, any other state, or the federal government, on account of any disability caused by accident or illness. In the event that workers' compensation benefits are subsequently awarded to an individual, whether on a weekly basis or

as a lump sum, for a week or weeks with respect to which that individual has received waiting period credit, benefits, or dependents' allowances, under chapters 39 - 41 of this title, the director, for the temporary disability insurance fund, shall be subrogated to that individual's rights in that award to the extent of the amount of benefits and/or dependents' allowances paid to him or her under those chapters.

(b) (1) Whenever an employer or his or her insurance carrier has been notified that an individual has filed a claim for unemployment due to sickness for any week or weeks under chapters 39 -- 41 of this title for which week or weeks that individual is or may be eligible for benefits under chapters 29 -- 38 of this title, that notice shall constitute a lien upon any pending award, order, or settlement to that individual under chapters 29 - 38 of this title.

(2) The employer or his insurance carrier shall be required to reimburse the director, for the temporary disability insurance fund, the amount of benefits and/or dependents' allowances received by the individual under chapters 39 - 41 of this title, for any week or weeks for which that award, order, or settlement is made.

(c) Whenever an individual becomes entitled to or is awarded workers' compensation benefits for the same week or weeks with respect to which he has received benefits and/or dependents' allowances under chapters 39 - 41 of this title, and notice of that receipt has been given to the division of workers' compensation of the department of labor and training and/or the workers' compensation court, the division or court is required to and shall incorporate in the award, order, or approval of settlement, an order requiring the employer or his or her insurance carrier to reimburse the director, for the temporary disability insurance fund, the amount of any disability benefits and/or dependents' allowances which may have been paid to the employee for unemployment due to sickness for those weeks under chapters 39 - 41 of this title. Nothing herein shall be construed to deny benefits under this chapter to individuals who receive a lump sum settlement pursuant to section 28-33-25 and subsequently apply for benefits under this chapter as long as the sickness or illness is materially different from the one for which the individual was paid workers' compensation, is not affected by said injury and/or the medical condition did not result from the injury for which the employee was paid workers' compensation benefits.

(d) If, through inadvertence, error, or mistake, an individual has received benefit payments and/or dependents' allowances for any week or weeks under chapters 39 - 41 of this title, and has also received payments for the same week or weeks under any workers' compensation law of this state, any other state, or of the federal government, he or she shall, in the discretion of the director of the department of labor and training, be liable to have that sum deducted from any benefits payable to him or her under chapters 39 - 41 of this title, or shall be

liable to repay to the director, for the temporary disability insurance fund, a sum equal to that amount received, and that sum shall be collectible in the manner provided in section 28-40-12 for the collection of past due contributions.

(e) Notwithstanding any other provision of this section, no individual who, prior to September 1, 1969, has sustained an injury by reason of which he or she may be eligible for benefits under chapters 29-38 of this title shall be deprived of any rights which he or she may have under chapters 39 - 41 of this title.

SECTION 4. Sections 28-53-2 and 28-53-7 of the General Laws in Chapter 28-53 entitled "Rhode Island Uninsured Employers Fund" are hereby amended to read as follows:

28-53-2. Establishment -- Sources -- Administration. -- (a) There shall be established within the department of labor and training a special restricted receipt account to be known as the Rhode Island uninsured employers fund. The fund shall be capitalized from excise taxes assessed against uninsured employers pursuant to the provisions of section 28-53-9 of this chapter and from general revenues appropriated by the legislature. Beginning in state fiscal year ending ~~June 30, 2010,~~ June 30, 2011, the legislature may appropriate up to two million dollars ($2,000,000) in general revenue funds annually for deposit into the Rhode Island uninsured employers fund.

(b) All moneys in the fund shall be mingled and undivided. The fund shall be administered by the director of the department of labor and training or his or her designee, but in no case shall the director incur any liability beyond the amounts paid into and earned by the fund.

(c) All amounts owed to the uninsured employers fund from illegally uninsured employers are intended to be excise taxes and as such, all ambiguities and uncertainties are to be resolved in favor of a determination that such assessments are excise taxes.

28-53-7. Payments to employees of uninsured employers. -- (a) Where it is determined that the employee was injured in the course of employment while working for an employer who fails to maintain a policy of workers' compensation insurance as required by Rhode Island general laws section 28-36-1, et seq., the uninsured employers fund shall pay the benefits to which the injured employee would be entitled pursuant to chapters 29 to 38 of this title subject to the limitations set forth herein.

(b) The workers' compensation court shall hear all petitions for payment from the fund pursuant to Rhode Island general laws section 28-30-1, et seq., provided, however, that the uninsured employers fund and the employer shall be named as parties to any petition seeking payment of benefits from the fund.

(c) Where an employee is deemed to be entitled to benefits from the uninsured employers fund, the fund shall pay benefits for disability and medical expenses as provided

pursuant to chapters 29 to 38 of this title except that the employee shall not be entitled to receive benefits for loss of function and disfigurement pursuant to the provisions of Rhode Island general laws section 28-33-19.

(d) The fund shall pay cost, counsel and witness fees as provided in Rhode Island general laws section 28-35-32 to any employee who successfully prosecutes any petitions for compensation, petitions for medical expenses, petitions to amend a pretrial order or memorandum of agreement and all other employee petitions and to employees who successfully defend, in whole or in part, proceedings seeking to reduce or terminate any and all workers' compensation benefits; provided, however, that the attorney's fees awarded to counsel who represent the employee in petitions for lump sum commutation filed pursuant to Rhode Island general laws section 28-33-25 or in the settlement of disputed cases pursuant to Rhode Island general laws section 28-33-25.1 shall be limited to the maximum amount paid to counsel who serve as court appointed attorneys in workers' compensation proceedings as established by rule or order of the Rhode Island supreme court.

(e) In the event that the uninsured employer makes payment of any monies to the employee to compensate the employee for lost wages or medical expenses, the fund shall be entitled to a credit for all such monies received by or on behalf of the employee against any future benefits payable directly to the employee.

(f) This section shall apply to injuries that occur on or after ~~January 1, 2011~~ January 1, 2012.

SECTION 5. Section 45-21-31 of the General Laws in Chapter 45-21 entitled "Retirement of Municipal Employees" is hereby amended to read as follows:

45-21-31. Offset of workers' compensation or personal injury recovery. -- Any amounts paid or payable under the provisions of any workers' compensation law, exclusive of Medicare set aside allocation, specific compensation benefits or any benefits due pursuant to the terms of a collective bargaining agreement or as the result of any action for damages for personal injuries against the municipality by which the member was employed, on account of death or disability of a member occurring while in the performance of duty, are offset against and payable in lieu of any benefits payable out of funds provided by the municipality under the provisions of this chapter on account of the death or disability of the member. If the value of the total commuted benefits under any workers' compensation law or action is less than the actuarial reserve on the benefits otherwise payable from funds provided by the municipality under this chapter, the value of the commuted payments is deducted from the actuarial reserve, and the benefits that may be provided by the actuarial reserve so reduced are payable under the provisions

of this chapter.

SECTION 6. 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

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This act would make changes in the medical review procedure for claimants receiving workers' compensation benefits.

This act would take effect upon passage.

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