

2011 -- S 0408

=====  
LC01043  
=====

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: Senator James E. Doyle

Date Introduced: March 10, 2011

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-33-47 of the General Laws in Chapter 28-33 entitled "Workers'  
2 Compensation - Benefits" is hereby amended to read as follows:

3 **28-33-47. Reinstatement of injured worker.** -- (a) A worker who has sustained a  
4 compensable injury shall be reinstated by the worker's employer to the worker's former position  
5 of employment upon written demand for reinstatement, if the position exists and is available and  
6 the worker is not disabled from performing the duties of the position with reasonable  
7 accommodation made by the employer in the manner in which the work is to be performed. A  
8 workers' former position is "available" even if that position has been filled by a replacement  
9 while the injured worker was absent as a result of the worker's compensable injury. If the former  
10 position is not available, the worker shall be reinstated in any other existing position that is vacant  
11 and suitable. A certificate by the treating physician that the physician approves the worker's  
12 return to the worker's regular employment or other suitable employment shall be prima facie  
13 evidence that the worker is able to perform the duties.

14 (b) The right of reinstatement shall be subject to the provisions for seniority rights and  
15 other employment restrictions contained in a valid collective bargaining agreement between the  
16 employer and a representative of the employer's employees, and nothing shall exempt any  
17 employer from or excuse full compliance with any applicable provisions of the Americans with  
18 Disabilities Act, 42 U.S.C. section 12101 et seq., and chapter 87 of title 42.

1 (c) Notwithstanding subsection (a) of this section:

2 (1) The right to reinstatement to the worker's former position under this section  
3 terminates upon any of the following:

4 (i) A medical determination by the treating physician, impartial medical examiner, or  
5 comprehensive independent health care review team that the worker cannot, at maximum medical  
6 improvement, return to the former position of employment or any other existing position with the  
7 same employer that is vacant and suitable;

8 (ii) The approval by the workers' compensation court of a vocational rehabilitation  
9 program for the worker to train the worker for alternative employment with another employer;

10 (iii) The worker's acceptance of suitable employment with another employer after  
11 reaching maximum medical improvement;

12 (iv) The worker's refusal of a bona fide offer from the employer of light duty  
13 employment or suitable alternative employment, prior to reaching maximum medical  
14 improvement;

15 (v) The expiration of ten (10) days from the date that the worker is notified by the insurer  
16 or self-insured employer by mail at the address to which the weekly compensation benefits are  
17 mailed that the worker's treating physician has released the worker for employment unless the  
18 worker requests reinstatement within that time period;

19 (vi) The expiration of thirty (30) days after the employee reaches maximum medical  
20 improvement or concludes or ceases to participate in an approved program of rehabilitation, or  
21 one year from the date of injury, whichever is sooner, provided, in the event a petition to establish  
22 liability for an injury is filed, but not decided within one year of the date of injury, within twenty-  
23 one (21) days from the first finding of liability. Notwithstanding the foregoing, where the  
24 employee is participating in an approved program of rehabilitation specifically designed to  
25 provide the employee with the ability to perform a job for which he or she would be eligible  
26 under subsection (a) of this section, the right of reinstatement shall terminate when the employee  
27 concludes or ceases to participate in the program or eighteen (18) months from the date of injury,  
28 whichever is sooner;

29 (vii) Except where otherwise provided under a collective bargaining agreement, the  
30 approval by the court of a settlement pursuant to chapters 29 -- 38 of this title.

31 (2) The right to reinstatement under this section does not apply to:

32 (i) A worker hired on a temporary basis;

33 (ii) A worker employed in a seasonal occupation;

34 ~~(iii) A worker who works out of a hiring hall operating pursuant to a collective~~

1 ~~bargaining agreement;~~

2 ~~(iii)~~ (iv) A worker whose employer employs nine (9) or fewer workers at the time of the  
3 worker's injury;

4 (iv) ~~(v)~~ A worker who is on a probationary period of less than ninety-one (91) days.

5 (d) Any violation of this section is deemed an unlawful employment practice. If the  
6 employee applies for reinstatement under this section and the employer in violation of this section  
7 refuses to reinstate the employee, the workers' compensation court is authorized to order  
8 reinstatement and award back pay and the cost of fringe benefits lost during the period as  
9 appropriate. Determinations of reinstatement disputes shall be rendered by the workers'  
10 compensation court in accordance with this section and chapters 29 -- 38 of this title, and the  
11 rules of practice of the workers' compensation court.

12 (e) When an employee is entitled to reinstatement under this section, but the position to  
13 which reinstatement is sought does not exist or is not available, the employee may file for  
14 unemployment benefits as if then laid off from that employment, and unemployment benefits  
15 shall be calculated pursuant to section 28-42-3(4); provided, that an employee cannot collect both  
16 workers' compensation indemnity benefits and unemployment benefits under this section.

17 (f) The education division of the department of labor and training shall provide  
18 information to employees who receive benefits under this title of the provisions of this section.

19 (g) Any requests for reinstatement determinations pending before the director prior to  
20 September 1, 2000, will remain at the department for resolution. Any requests after this date will  
21 be heard by the workers' compensation court.

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

=====  
LC01043  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T  
RELATING TO LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION -  
BENEFITS

\*\*\*

- 1           This act would allow a worker working out of a hiring hall operating under a collective
- 2 bargaining agreement the right to reinstatement.
- 3           This act would take effect upon passage.

=====  
LC01043  
=====