

2010 -- S 2083

LC00665

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION

Introduced By: Senators P Fogarty, Ciccone, Ruggerio, and Lanzi

Date Introduced: January 27, 2010

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-33-8, 28-33-19 and 28-33-34.1 of the General Laws in Chapter
2 28-33 entitled "Workers' Compensation - Benefits" are hereby amended to read as follows:

3 **28-33-8. Employee's choice of physician, dentist, or hospital -- Payment of charges --**
4 **Physician reporting schedule.** -- (a) (1) An injured employee shall have freedom of choice to
5 obtain health care, diagnosis, and treatment from any qualified health care provider initially. The
6 initial health care provider of record may, without prior approval, refer the injured employee to
7 any qualified specialist for independent consultation or assessment, or specified treatment. If the
8 insurer or self-insured employer has a preferred provider network approved and kept on record by
9 the medical advisory board, any change by the employee from the initial health care provider of
10 record shall only be to a health care provider listed in the approved preferred provider network. If
11 the employee seeks to change to a health care provider not in the approved preferred provider
12 network, the employee must obtain the approval of the insurer or self-insured employer. Nothing
13 contained in this section shall prevent the treatment, care, or rehabilitation of an employee by
14 more than one physician, dentist, or hospital. The employee's first visit to any facility providing
15 emergency care or to a physician or medical facility under contract with or agreement with the
16 employer or insurer to provide priority care shall not constitute the employee's initial choice to
17 obtain health care, diagnosis or treatment.

18 (2) In addition to the treatment of qualified health care providers, the employee shall
19 have the freedom to obtain a rehabilitation evaluation by a rehabilitation counselor certified by

1 the director pursuant to section 28-33-41 in cases where the employee has received compensation
2 for a period of more than three (3) months, and the employer shall pay the reasonable fees
3 incurred by the rehabilitation counselor for the initial assessment.

4 (b) Within three (3) days of an initial visit following an injury, the health care provider
5 shall provide to the insurer or self-insured employer, and the employee and his or her attorney a
6 notification of compensable injury form to be approved by the administrator of the medical
7 advisory board. Within three (3) days of the injured employee's release or discharge, return to
8 work, and/or recovery from an injury covered by chapters 29 -- 38 of this title, the health care
9 provider shall provide a notice of release to the insurer or self-insured employer and the employee
10 and his or her attorney on a form approved by the division. A twenty dollar (\$20.00) fee may be
11 charged by the health care provider to the insurer or self-insured employer for the notification of
12 compensable injury forms or notice of release forms or for affidavits filed pursuant to subsection
13 (c) of this section, but only if filed in a timely manner. No claim for care or treatment by a
14 physician, dentist, or hospital chosen by an employee shall be valid and enforceable as against his
15 or her employer, the employer's insurer, or the employee, unless the physician, dentist, or hospital
16 gives written notice of the employee's choice to the employer/insurance carrier within fifteen (15)
17 days after the beginning of the services or treatment. The health care provider shall in writing
18 present to the employer or insurance carrier a final itemized bill for all unpaid services or
19 treatment within three (3) months after the conclusion of the treatment. The employee shall not be
20 personally liable to pay any physician, dentist, or hospital bills in cases where the physician,
21 dentist, or hospital has forfeited the right to be paid by the employer or insurance carrier because
22 of noncompliance with this section.

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

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

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

34 ~~(iii) (ii)~~ (ii) Anticipated further treatment including type, frequency, and duration of

1 treatment(s), whether or not maximum medical improvement has been reached ~~or when it is~~
2 ~~expected to be reached~~, and the anticipated date of discharge;

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

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

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

10 (d) "Itemized bill", as referred to in this section, means a statement of charges, on a form
11 HCFA 1500 or other form suitable to the insurer, which includes, but is not limited to, an
12 enumeration of specific types of care provided, facilities or equipment used, services rendered,
13 and appliances or medicines prescribed, for purposes of identifying the treatment given the
14 employee with respect to his or her injury.

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

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

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

21 (f) (1) Compensation for medical expenses and other services under section 28-33-5, 28-
22 33-7 or 28-33-8 is due and payable within twenty-one (21) days from the date a request is made
23 for payment of these expenses by the provider of the medical services. In the event payment is not
24 made within twenty-one (21) days from the date a request is made for payment, the provider of
25 medical services may add, and the insurer or self-insurer shall pay, interest at the per annum rate
26 as provided in section 9-21-10 on the amount due. The employee or the medical provider may file
27 a petition with the administrator of the workers' compensation court which petition shall follow
28 the procedure as authorized in chapter 35 of this title.

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

32 **28-33-19. Additional compensation for specific injuries.** -- (a) (1) In case of the
33 following specified injuries there shall be paid in addition to all other compensation provided for
34 in chapters 29 to 38 of this title a weekly payment equal to one-half (1/2) of the average weekly

1 earnings of the injured employee, but in no case more than ninety dollars (\$90.00) nor less than
2 forty-five dollars (\$45.00) per week. In case of the following specified injuries that occur on or
3 after January 1, 2011, there shall be paid in addition to all other compensation provided for in
4 chapters 29 to 38 of this title a weekly payment equal to one-half (1/2) of the average weekly
5 earnings of the injured employee, but in no case more than one hundred eighty dollars (\$180.00)
6 nor less than ninety dollars (\$90.00) per week. Payment made under this section shall be made in
7 a one time payment unless the parties otherwise agree. Payment shall be mailed within fourteen
8 (14) days of the entry of a decree, order, or agreement of the parties:

9 (i) For the loss by severance of both hands at or above the wrist, or for the loss of the
10 arm at or above the elbow or for the loss of the leg at or above the knee, or both feet at or above
11 the ankle, or of one hand and one foot, or the entire and irrecoverable loss of the sight of both
12 eyes, or the reduction to one-tenth (1/10) or less of normal vision with glasses, for a period of
13 three hundred twelve (312) weeks; provided, that for the purpose of this chapter the Snellen chart
14 reading 20/200 shall equal one-tenth (1/10) of normal vision or a reduction of ninety percent
15 (90%) of the vision. Additionally, any loss of visual performance including, but not limited to,
16 loss of binocular vision, other than direct visual acuity may be considered in evaluating eye loss;

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

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

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

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

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

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

33 (viii) For the loss by severance of one phalange of the second finger of either hand, for a
34 period of sixteen (16) weeks; for the loss by severance of two (2) phalanges of the second finger

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

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

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

11 (xi) For the loss by severance of one phalange of the big toe on either foot, for a period
12 of twenty (20) weeks; for the loss by severance of two (2) phalanges of the big toe of either foot,
13 for a period of thirty-eight (38) weeks; for the loss by severance at or above the distal joint of any
14 other toe than the big toe, for a period of ten (10) weeks for each such toe;

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

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

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

28 (3) In case of the following specified injuries there shall be paid in addition to all other
29 compensation provided for in chapters 29 - 38 under this title a weekly payment equal to one-half
30 (1/2) of the average weekly earnings of the injured employee, but in no case more than ninety
31 dollars (\$90.00) nor less than forty-five dollars (\$45.00) per week. Payment under this subsection
32 shall be made in a one time payment unless the parties otherwise agree. Payment shall be mailed
33 within fourteen (14) days of the entry of a decree, order, or agreement of the parties:

34 ~~(i) For partial loss by severance for any of the injuries specified in paragraphs (1)(i) —~~

1 ~~(1)(xii) of this subsection, proportionate benefits shall be paid for the period of time that the~~
2 ~~partial loss by severance bears to the total loss by severance.~~

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

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

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

15 (iii) If the employer has conducted baseline screenings within one (1) year of exposure to
16 harmful noise to evaluate the extent of an employee's pre-existing hearing loss, the causative
17 factor shall be apportioned based on the employee's pre-existing hearing loss and subsequent
18 occupational hearing loss, and the compensation payable to the employee shall only be that
19 portion of the compensation related to the present work-related exposure.

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

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

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

1 (vii) If previous hearing loss, whether occupational or not, is established by an
2 audiometric examination or other competent evidence, whether or not the employee was exposed
3 to assessable noise exposure within one year preceding the test, the employer is not liable for the
4 previous loss, nor is the employer liable for a loss for which compensation has previously been
5 paid or awarded. The employer is liable only for the difference between the percent of
6 occupational hearing loss determined as of the date of the audiometric examination conducted by
7 a certified audiometric technician using an audiometer which meets the specifications established
8 by the American National Standards Institute (ANSI 3.6-1969, r1973) used to determine
9 occupational hearing loss and the percentage of loss established by the baseline audiometric
10 examination. An amount paid to an employee for occupational hearing loss by any other
11 employer shall be credited against compensation payable by the subject employer for the hearing
12 loss. The employee shall not receive in the aggregate greater compensation from all employers
13 for occupational hearing loss than that provided in this section for total occupational hearing loss.
14 A payment shall not be paid to an employee unless the employee has worked in excessive noise
15 exposure employment for a total period of at least one hundred eighty (180) days for the
16 employer for whom compensation is claimed.

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

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

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

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

1 **28-33-34.1. Schedule of medical review.** -- (a) On or about twenty-six (26) weeks from
2 the date of a compensable injury, any person obtaining incapacity benefits ~~shall~~ may be examined
3 and their diagnosis and treatment reviewed by a comprehensive independent health care review
4 team or an impartial medical examiner. The comprehensive independent health care review team
5 or impartial medical examiner shall be selected through a mechanism to be established by the
6 administrator of the medical advisory board. The results of the examination and review shall be
7 provided to the employee and the insurer or self-insured employer within fourteen (14) days of
8 the examination and a copy shall be filed with the medical advisory board. The comprehensive
9 independent health care review team and/or impartial medical examiner shall review the treating
10 physician's findings and diagnosis and make its own findings of the extent and nature of the
11 claimed disability, the degree of functional impairment and/or disability, the expectation of
12 further medical improvement, any further medical care, treatment, and/or rehabilitation services
13 that may be required to reach maximum medical improvement, type(s) of work that can be
14 performed within existing physical capacity, the degree of disability expected at maximum
15 medical improvement, whether the employee can return to the former position of employment,
16 and compliance of the treating physician with protocols and standards of medical care established
17 by the medical advisory board. The report shall be admissible as the court's exhibit. A party may
18 be permitted to cross-examine the author(s) of the report with leave of the court.

19 (b) On or about thirteen (13) weeks after any examination under this section or section
20 28-33-35, a comprehensive independent health care review team or impartial medical examiner
21 shall perform a similar review. The same comprehensive independent health care review team or
22 impartial medical examiner may not perform more than two (2) consecutive reviews on a
23 particular employee.

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

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

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

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

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

1 ~~appropriate to his or her present level of earnings capacity; or~~

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

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

8 SECTION 2. Section 28-41-6 of the General Laws in Chapter 28-41 entitled "Temporary
9 Disability Insurance - Benefits" is hereby amended to read as follows:

10 **28-41-6. Effect on waiting period credit and benefits of receipt of workers'**
11 **compensation payments.** -- (a) No individual shall be entitled to receive waiting period credit

12 benefits or dependents' allowances with respect to which benefits are paid or payable to that
13 individual under any workers' compensation law of this state, any other state, or the federal
14 government, on account of any disability caused by accident or illness. In the event that workers'
15 compensation benefits are subsequently awarded to an individual, whether on a weekly basis or
16 as a lump sum, for a week or weeks with respect to which that individual has received waiting
17 period credit, benefits, or dependents' allowances, under chapters 39 - 41 of this title, the director,
18 for the temporary disability insurance fund, shall be subrogated to that individual's rights in that
19 award to the extent of the amount of benefits and/or dependents' allowances paid to him or her
20 under those chapters.

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

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

30 (c) Whenever an individual becomes entitled to or is awarded workers' compensation
31 benefits for the same week or weeks with respect to which he has received benefits and/or
32 dependents' allowances under chapters 39 - 41 of this title, and notice of that receipt has been
33 given to the division of workers' compensation of the department of labor and training and/or the
34 workers' compensation court, the division or court is required to and shall incorporate in the

1 award, order, or approval of settlement, an order requiring the employer or his or her insurance
2 carrier to reimburse the director, for the temporary disability insurance fund, the amount of any
3 disability benefits and/or dependents' allowances which may have been paid to the employee for
4 unemployment due to sickness for those weeks under chapters 39 - 41 of this title. Nothing herein
5 shall be construed to deny benefits under this chapter to individuals who receive a lump sum
6 settlement pursuant to section 28-33-25 and subsequently apply for benefits under this chapter as
7 long as the sickness or illness is materially different from the one for which the individual was
8 paid workers' compensation, is not affected by said injury and/or the medical condition did not
9 result from the injury for which the employee was paid workers' compensation benefits.

10 (d) If, through inadvertence, error, or mistake, an individual has received benefit
11 payments and/or dependents' allowances for any week or weeks under chapters 39 - 41 of this
12 title, and has also received payments for the same week or weeks under any workers'
13 compensation law of this state, any other state, or of the federal government, he or she shall, in
14 the discretion of the director of the department of labor and training, be liable to have that sum
15 deducted from any benefits payable to him or her under chapters 39 - 41 of this title, or shall be
16 liable to repay to the director, for the temporary disability insurance fund, a sum equal to that
17 amount received, and that sum shall be collectible in the manner provided in section 28-40-12 for
18 the collection of past due contributions.

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

23 SECTION 3. Sections 28-53-2 and 28-53-7 of the General Laws in Chapter 28-53
24 entitled "Rhode Island Uninsured Employers Fund" are hereby amended to read as follows:

25 **28-53-2. Establishment -- Sources -- Administration.** -- (a) There shall be established
26 within the department of labor and training a special restricted receipt account to be known as the
27 Rhode Island uninsured employers fund. The fund shall be capitalized from excise taxes assessed
28 against uninsured employers pursuant to the provisions of section 28-53-9 of this chapter and
29 from general revenues appropriated by the legislature. Beginning in state fiscal year ending ~~June~~
30 ~~30, 2010~~, June 30, 2012, the legislature may appropriate up to two million dollars (\$2,000,000) in
31 general revenue funds annually for deposit into the Rhode Island uninsured employers fund.

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

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

4 **28-53-7. Payments to employees of uninsured employers.** -- (a) Where it is determined
5 that the employee was injured in the course of employment while working for an employer who
6 fails to maintain a policy of workers' compensation insurance as required by Rhode Island general
7 laws section 28-36-1, et seq., the uninsured employers fund shall pay the benefits to which the
8 injured employee would be entitled pursuant to chapters 29 to 38 of this title subject to the
9 limitations set forth herein.

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

14 (c) Where an employee is deemed to be entitled to benefits from the uninsured
15 employers fund, the fund shall pay benefits for disability and medical expenses as provided
16 pursuant to chapters 29 to 38 of this title except that the employee shall not be entitled to receive
17 benefits for loss of function and disfigurement pursuant to the provisions of Rhode Island general
18 laws section 28-33-19.

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

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

34 (f) This section shall apply to injuries that occur on or after ~~January 1, 2011~~ [January 1,](#)

1 [2013](#).

2 SECTION 4. Section 45-21-31 of the General Laws in Chapter 45-21 entitled
3 "Retirement of Municipal Employees" is hereby amended to read as follows:

4 **45-21-31. Offset of workers' compensation or personal injury recovery.** -- Any
5 amounts paid or payable under the provisions of any workers' compensation law, [exclusive of](#)
6 [Medicare set aside allocation, specific compensation benefits or any benefits due pursuant to the](#)
7 [terms of a collective bargaining agreement](#) or as the result of any action for damages for personal
8 injuries against the municipality by which the member was employed, on account of death or
9 disability of a member occurring while in the performance of duty, are offset against and payable
10 in lieu of any benefits payable out of funds provided by the municipality under the provisions of
11 this chapter on account of the death or disability of the member. If the value of the total
12 commuted benefits under any workers' compensation law or action is less than the actuarial
13 reserve on the benefits otherwise payable from funds provided by the municipality under this
14 chapter, the value of the commuted payments is deducted from the actuarial reserve, and the
15 benefits that may be provided by the actuarial reserve so reduced are payable under the provisions
16 of this chapter.

17 SECTION 5. 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 make changes in the medical review procedure for claimants receiving
2 workers' compensation benefits.

3 This act would take effect upon passage.

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