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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION -  
GENERAL PROVISIONS

Introduced By: Senators McCaffrey, Ciccone, and Walaska

Date Introduced: March 03, 2015

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

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

3 **28-29-2. Definitions. --** In chapters 29 -- 38 of this title, unless the context otherwise  
4 requires:

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

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

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

1           (ii) As used under the provisions of this title, "functional impairment" means an  
2 anatomical or functional abnormality existing after the date of maximum medical improvement as  
3 determined by a medically or scientifically demonstrable finding and based upon the Sixth (6th)  
4 edition of the American Medical Association's Guide to the Evaluation of Permanent Impairment  
5 or comparable publications of the American Medical Association.

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

9           (4) "Employee" means any person who has entered into the employment of or works  
10 under contract of service or apprenticeship with any employer, except that in the case of a city or  
11 town other than the city of Providence it shall only mean that class or those classes of employees  
12 as may be designated by a city, town, or regional school district in a manner provided in this  
13 chapter to receive compensation under chapters 29 -- 38 of this title. Any person employed by the  
14 state of Rhode Island, except for sworn employees of the Rhode Island State Police, or by the  
15 Rhode Island Airport Corporation who is otherwise entitled to the benefits of chapter 19 of title  
16 45 shall be subject to the provisions of chapters 29 -- 38 of this title for all case management  
17 procedures and dispute resolution for all benefits. The term "employee" does not include any  
18 individual who is a shareholder or director in a corporation, general or limited partners in a  
19 general partnership, a registered limited liability partnership, a limited partnership, or partners in  
20 a registered limited liability limited partnership, or any individual who is a member in a limited  
21 liability company. These exclusions do not apply to shareholders, directors and members who  
22 have entered into the employment of or who work under a contract of service or apprenticeship  
23 within a corporation or a limited liability company. The term "employee" also does not include a  
24 sole proprietor, independent contractor, or a person whose employment is of a casual nature, and  
25 who is employed other than for the purpose of the employer's trade or business, or a person  
26 whose services are voluntary or who performs charitable acts, nor shall it include the members of  
27 the regularly organized fire and police departments of any town or city except for appeals from an  
28 order of the retirement board filed pursuant to the provisions of Rhode Island general law § 45-  
29 21.2-9; provided, however, that it shall include the members of the police and aircraft rescue and  
30 firefighting (ARFF) units of the Rhode Island Airport Corporation. Whenever a contractor has  
31 contracted with the state, a city, town, or regional school district any person employed by that  
32 contractor in work under contract shall not be deemed an employee of the state, city, town, or  
33 regional school district as the case may be. Any person who on or after January 1, 1999, was an  
34 employee and became a corporate officer shall remain an employee, for purposes of these

1 chapters, unless and until coverage under this act is waived pursuant to subsection 28-29-8(b) or §  
2 28-29-17. Any person who is appointed a corporate officer between January 1, 1999 and  
3 December 31, 2001, and was not previously an employee of the corporation, will not be  
4 considered an employee, for purposes of these chapters, unless that corporate officer has filed a  
5 notice pursuant to subsection 28-29-19(b). In the case of a person whose services are voluntary or  
6 who performs charitable acts, any benefit received, in the form of monetary remuneration or  
7 otherwise, shall be reportable to the appropriate taxation authority but shall not be deemed to be  
8 wages earned under contract of hire for purposes of qualifying for benefits under chapters 29 --  
9 38 of this title. Any reference to an employee who had been injured shall, where the employee is  
10 dead, include a reference to his or her dependents as defined in this section, or to his or her legal  
11 representatives, or, where he or she is a minor or incompetent, to his or her conservator or  
12 guardian. A "seasonal occupation" means those occupations in which work is performed on a  
13 seasonal basis of not more than sixteen (16) weeks.

14 (5) "Employer" includes any person, partnership, corporation, or voluntary association,  
15 and the legal representative of a deceased employer; it includes the state, and the city of  
16 Providence. It also includes each city, town, and regional school district in the state that votes or  
17 accepts the provisions of chapters 29 -- 38 of this title in the manner provided in this chapter or is  
18 a party to an appeal from an order of the retirement board filed pursuant to the provisions of  
19 Rhode Island general law § 45-21.2-9.

20 (6) "General or special employer":

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

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

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

33 [However, for injuries occurring on or after January 1, 2013, excepting injuries where the special](#)  
34 [employer is making payment of workers' compensation benefits directly to the injured temporary](#)

1 [employee pursuant to § 28-29-2\(6\)\(iv\) herein, if the special employer has acted or failed to act](#)  
2 [with reckless disregard for the safety of a temporary employee as defined in § 28-29-2\(13\) herein,](#)  
3 [and such reckless disregard for the safety of the temporary employee was a proximate cause of](#)  
4 [said temporary employee's injury, the special employer, only in such event, shall not be deemed](#)  
5 [the employer for purposes of § 28-29-20.](#)

6 (iv) Effective January 1, 2003, whenever a general employer enters into a contract or  
7 arrangement with a special employer to supply an employee or employees for work, the special  
8 employer shall require an insurer generated insurance coverage certification, on a form prescribed  
9 by the department, demonstrating Rhode Island workers' compensation and employer's liability  
10 coverage evidencing that the general employer carries workers' compensation insurance with that  
11 insurer with no indebtedness for its employees for the term of the contract or arrangement. In the  
12 event that the special employer fails to obtain and maintain at policy renewal and thereafter this  
13 insurer generated insurance coverage certification demonstrating Rhode Island workers'  
14 compensation and employer's liability coverage from the general employer, the special employer  
15 is deemed to be the employer pursuant to the provisions of this section. Upon the cancellation or  
16 failure to renew, the insurer having written the workers' compensation and employer's liability  
17 policy shall notify the certificate holders and the department of the cancellation or failure to  
18 renew and upon notice, the certificate holders shall be deemed to be the employer for the term of  
19 the contract or arrangement unless or until a new certification is obtained.

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

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

30 (8) "Maximum medical improvement" means a point in time when any medically  
31 determinable physical or mental impairment as a result of injury has become stable and when no  
32 further treatment is reasonably expected to materially improve the condition. Neither the need for  
33 future medical maintenance nor the possibility of improvement or deterioration resulting from the  
34 passage of time and not from the ordinary course of the disabling condition, nor the continuation

1 of a pre-existing condition precludes a finding of maximum medical improvement. A finding of  
2 maximum medical improvement by the workers' compensation court may be reviewed only  
3 where it is established that an employee's condition has substantially deteriorated or improved.

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

6 (10) "Suitable alternative employment" means employment or an actual offer of  
7 employment which the employee is physically able to perform and will not exacerbate the  
8 employee's health condition and which bears a reasonable relationship to the employee's  
9 qualifications, background, education, and training. The employee's age alone shall not be  
10 considered in determining the suitability of the alternative employment.

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

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

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

21 SECTION 2. Section 5-75-9 of the General Laws in Chapter 5-75 entitled "Professional  
22 Employer Organizations Act of 2004" is hereby amended to read as follows:

23 **5-75-9. Workers' compensation.** -- (a) The responsibility to obtain workers'  
24 compensation coverage for covered employees, from a carrier licensed to do business in this state  
25 and otherwise in compliance with all applicable requirements, shall be specifically allocated in  
26 the professional employer agreement to either the client or the PEO. If such responsibility is  
27 allocated to the PEO under any such agreement, such agreement shall require that the PEO  
28 maintain and provide to client, at the termination of the agreement if requested by the client,  
29 records regarding the loss experience related to workers' compensation insurance provided to  
30 covered employees pursuant to such agreement. A certificate of insurance as proof of workers'  
31 compensation coverage shall be issued to the client if the PEO is to provide coverage or to the  
32 PEO if the client is to provide coverage with notification of cancellation to be issued immediately  
33 to either entity. In the case of cancellation, the other entity must immediately obtain coverage.

34 (b) Workers' compensation. – Except as otherwise provided in chapters 29 through 38 of

1 [title 28 for "temporary employees" provided to the client, and as to the furnishing of "temporary](#)  
2 [help services" as defined in this section.](#) ~~Both~~ [both](#) client and the PEO shall be considered the  
3 employer for the purpose of coverage under the workers' compensation act and both the PEO and  
4 its client shall be entitled to protection of the exclusive remedy provision of the workers'  
5 compensation act irrespective of which co-employer obtains such workers' compensation  
6 coverage.

7 SECTION 3. 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 -  
GENERAL PROVISIONS

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1           This act would establish definitions for leased and temporary employees for workers'  
2    compensation benefits. It would also address the workers' compensation potential liability for  
3    "special employers."

4           This act would take effect upon passage.

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