

Chapter 377
2008 -- S 3111
Enacted 07/08/08

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

Introduced By: Senators Connors, Ruggerio, Ciccone, Lanzi, and P Fogarty
Date Introduced: June 12, 2008

It is enacted by the General Assembly as follows:

SECTION 1. Sections 28-29-2 and 28-29-7.2 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 Fifth (5th) 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, or by the Rhode Island Airport Corporation 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; provided, however, that it shall include the members of the police and aircraft rescue and firefighting (ARFF) units of the Rhode Island Airport Corporation. 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.

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

(10) "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 suitability of the alternative employment.

(11) "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.

28-29-7.2. Farm laborers. -- Farmers, nursery operators, ~~arborists~~, or farm laborers are not subject to the provisions of chapters 29 -- 38 of this title unless the farmers or agricultural employers employ twenty-five (25) or more farm laborers or agricultural employees for thirteen

(13) consecutive weeks. Farmers, nursery operators, ~~arborists~~, or agricultural employers who employ twenty-five (25) or more farm laborers or agricultural employees for thirteen (13) consecutive weeks are not subject to the provisions of chapters 29 -- 38 of this title if the farmer

or agricultural employer maintains health and disability insurance for all of its farm laborers or agricultural employees; provided, that the health and disability insurance premium exceeds the premium for workers' compensation insurance. Farmers or agricultural employers who employ twenty-five (25) or more farm laborers or agricultural employees for thirteen (13) consecutive weeks are subject to chapters 29 -- 38 of this title for those agricultural enterprises which produce

greenhouse crops, fruit and vegetable crops, herbaceous crops, sod crops, viticulture, viniculture, floriculture, feed for livestock, forestry, dairy farming, aquaculture, the raising of livestock, fur-bearing animals, poultry and eggs, bees and honey, mushrooms, and nursery stock.

SECTION 2. Sections 28-33-18 and 28-33-18.3 of the General Laws in Chapter 28-33 entitled "Workers' Compensation - Benefits" are hereby amended to read as follows:

28-33-18. Weekly compensation for partial incapacity. -- (a) While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to seventy-five percent (75%) of the difference between his or her spendable average weekly base wages, earnings, or salary before the injury as computed pursuant to the provisions of section 28-38-20, and his or her spendable weekly wages, earnings, salary, or earnings capacity after that, but not more than the maximum weekly compensation rate for total incapacity as set forth in section 28-33-17. The provisions of this section are subject to the provisions of section 28-33-18.2.

(b) For all injuries occurring on or after September 1, 1990, where an employee's condition has reached maximum medical improvement and the incapacity for work resulting from the injury is partial, while the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to seventy percent (70%) of the weekly compensation rate as set forth in subsection (a) of this section. 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 provisions of this subsection are subject to the provisions of section 28-33-18.2.

(c) (1) Earnings capacity determined from degree of functional impairment pursuant to section 28-29-2(3) shall be determined as a percentage of the whole person based on the ~~most recent~~ Fifth (5th) edition of the American Medical Association Guides To The Value Of

Permanent Impairment. Earnings capacity shall be calculated from the percentage of impairment as follows:

(i) For impairment of five percent (5%) or less, earnings capacity shall be calculated so as to extinguish one hundred percent (100%) of weekly benefits.

(ii) For impairment of twenty-five percent (25%) or less, but greater than five percent (5%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less the percent of impairment of weekly benefits.

(iii) For impairment of fifty percent (50%) or less, but greater than twenty-five percent (25%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less one point two five (1.25) times the percent of impairment of weekly benefits.

(iv) For impairment of sixty-five percent (65%) or less, but greater than fifty percent (50%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less

one point five (1.5) times the percent of impairment of weekly benefits.

(2) An earnings capacity adjustment under this section shall be applicable only when the employee's condition has reached maximum medical improvement under section 28-29-2(3)(ii) and benefits are subject to adjustment pursuant to subsection (b) of this section.

(d) In the event partial compensation is paid, in no case shall the period covered by the compensation be greater than three hundred and twelve (312) weeks. In the event that compensation for partial disability is paid under this section for a period of three hundred and twelve (312) weeks, the employee's right to continuing weekly compensation benefits shall be determined pursuant to the terms of section 28-33-18.3. At least twenty-six (26) weeks prior to the expiration of the period, the employer or insurer shall notify the employee and the director of

its intention to terminate benefits at the expiration of three hundred and twelve (312) weeks and

advise the employee of the right to apply for a continuation of benefits under the terms of section

28-33-18.3. In the event that the employer or insurer fails to notify the employee and the director

as prescribed, the employer or insurer shall continue to pay benefits to the employee for a period

equal to twenty-six (26) weeks after the date the notice is served on the employee and the director.

28-33-18.3. Continuation of benefits -- Partial incapacity. -- (a) (1) For all injuries occurring on or after September 1, 1990, in those cases where the employee has received a notice of intention to terminate partial incapacity benefits pursuant to section 28-33-18, the employee or his or her duly authorized representative may file with the workers' compensation court a petition for continuation of benefits on forms prescribed by the workers' compensation court. In any proceeding before the workers' compensation court on a petition for continuation of partial incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence that his or her partial incapacity poses a material hindrance to obtaining employment suitable to his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1, ~~2007~~ 2010, "material hindrance" is defined to include only compensable injuries causing a greater than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of time for which the employee has received benefits for total incapacity shall not be included in the calculation of the three hundred and twelve (312) week period.

(2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1, ~~2007~~ 2010.

(b) (1) Where any employee's incapacity is partial and has extended for more than three hundred and twelve (312) weeks and the employee has proved an entitlement to continued benefits under subsection (a) of this section, payments made to these incapacitated employees shall be increased annually on the tenth (10th) day of May thereafter so long as the employee remains incapacitated. The increase shall be by an amount equal to the total percentage increase

in the annual consumer price index, United States city average for urban wage earners and

clerical workers, as formulated and computed by the Bureau of Labor Statistics of the United States Department of Labor for the period of March 1 to February 28 each year.

(2) "Index" as used in this section refers to the consumer price index, United States city average for urban wage earners and clerical workers, as that index was formulated and computed by the Bureau of Labor Statistics of the United States Department of Labor.

(3) The annual increase shall be based upon the percentage increase, if any, in the consumer price index for the month of a given year, over the index for February, the previous year. Thereafter, increases shall be made on May 10 annually, based upon the percentage increase, if any, in the consumer price index for the period of March 1 to February 28.

(4) The computations in this section shall be made by the director of labor and training and promulgated to insurers and employers making payments required by this section.

Increases

shall be paid by insurers and employers without further order of the court. If payment payable under this section is not mailed within fourteen (14) days after the employer or insurer has been

notified by publication in a newspaper of general circulation in the state it becomes due, there shall be added to the unpaid payment an amount equal to twenty percent (20%) of it, to be paid at

the same time as but in addition to the payment.

(5) This section applies only to payment of weekly indemnity benefits to employees as described in subdivision (1) of this subsection, and does not apply to specific compensation payments for loss of use or disfigurement or payment of dependency benefits or any other benefits payable under the Workers' Compensation Act.

(c) No petitions for commutation shall be allowed or entertained in those cases where an employee is receiving benefits pursuant to this section.

SECTION 3. Sections 28-36-12 and 28-36-15 of the General Laws in Chapter 28-36 entitled "Workers' Compensation - Insurance" are hereby amended to read as follows:

28-36-12. Notice of issuance, cancellation, or failure to renew policies. -- (a) Every insurance company having written a policy insuring against liability for personal injuries to employees shall notify the director of the issuance of the policy within ~~thirty (30)~~ five (5) days of the effective date of this policy in a manner determined by the director. Upon the cancellation of the policy or failure to renew it, every insurance company having written the policy shall immediately notify the director of the cancellation or failure to renew. The director shall have discretion to assess an administrative penalty of not more than two hundred fifty dollars (\$250) per offense against any insurance company that fails to notify the director as required in this section. The director, in his or her discretion, may bring a civil action to collect all assessed civil penalties. The workers' compensation court shall have jurisdiction to enforce compliance with any order of the director made pursuant to this section. Additionally, any insurance company that willfully fails to notify the director as required in this section shall be subject to prosecution for a misdemeanor and upon conviction may be punished by a fine of not more than two hundred fifty dollars (\$250) for each offense. All criminal actions for any violation of this section shall be

prosecuted by the attorney general at the request of the director.

(b) Cancellation of the policy or non-renewal shall not be deemed effective until written notice of the cancellation or non-renewal is received by the director.

(c) All penalties and fines collected pursuant to this section shall be deposited in the general fund.

28-36-15. Penalty for failure to secure compensation -- Personal liability of corporate officers. -- (a) Any employer required to secure the payment of compensation under chapters 29 -- 38 of this title who knowingly fails to secure that compensation shall be guilty of a

felony and shall be subject to imprisonment for up to two (2) years. In addition to the foregoing,

the employer shall be subject to a civil penalty punished by a fine ~~of not less than five hundred dollars (\$500) and not more than~~ not to exceed one thousand dollars (\$1,000) for each day of noncompliance with the requirements of this title. The director shall institute any and all reasonable measures to comprehensively monitor, investigate, and otherwise discover all employer noncompliance with this section and shall establish rules and regulations governing these measures. Each day shall constitute a separate and distinct offense for calculation of the penalty. Where that employer is a corporation the president, vice president, secretary, treasurer, and other officers of the corporation, shall be severally liable for the fine, penalty or imprisonment as provided in this section for the failure of that corporation to secure the payment

of compensation. The president, vice president, secretary, treasurer, and other officers of the corporation shall also be severally personally liable, jointly with the corporation for any compensation or other benefit which may accrue under those chapters in respect to any injury which may occur to any employee of that corporation while it fails to secure the payment of compensation as required by those chapters.

(b) Where the employer is a limited liability company, the managers and managing members who knowingly fail to secure the payment of compensation under chapters 29 -- 38 of this title shall be guilty of a felony and shall be subject to imprisonment for up to two (2) years. The managers and managing members shall also be severally liable for the fine, penalty or imprisonment as provided in this section for the failure of that company to secure the payment of

compensation. The managers and managing members shall be severally personally liable, jointly

with the company, for any compensation or other benefit which may accrue under those chapters

in respect to any injury which may occur to any employee of that company while it fails to secure

the payment of compensation as required by those chapters.

(c) Where the employer is a partnership, or a registered limited liability partnership, the partners who knowingly fail to secure the payment of compensation under chapters 29 -- 38 of this title shall be guilty of a felony and shall be subject to imprisonment for up to two (2) years. The partners shall also be severally liable for the fine, penalty, or imprisonment as provided in this section for the failure of that partnership to secure the payment of compensation. The partners

shall be severally personally liable, jointly with the partnership, for any compensation or other benefit which may accrue under those chapters in respect to any injury which may occur to any employee of that partnership while it fails to secure the payment as required by those chapters.

(d) Where the employer is a limited partnership or a registered limited liability limited partnership, the general partners who knowingly fail to secure the payment of compensation under chapters 29 -- 38 of this title shall be guilty of a felony and shall be subject to imprisonment for up to two (2) years. The general partners shall also be severally liable for the fine, penalty or imprisonment as provided in this section for the failure of that limited partnership to secure the payment of compensation. The general partners shall be severally personally liable, jointly with the limited partnership, for any compensation or other benefit which may accrue under those chapters in respect to any injury which may occur to any employee of that partnership while it fails to secure the payment of compensation as required by those chapters.

(e) All criminal actions for any violation of this section shall be prosecuted by the attorney general. The attorney general shall prosecute actions to enforce the payment of penalties and fines at the request of the director. The workers' compensation court shall have jurisdiction over all civil actions filed pursuant to this section.

The court shall consider the following factors in assessing a civil penalty: gravity of offense, resources of the employer, effect of the penalty on employees of the company, the reason for the lapse in coverage, and the recommendation of the director. Following a review of the factors set forth above, the court may suspend all or a part of a civil penalty or shall establish a time table for compliance with any court order.

(f) (1) As soon as practicable after the director receives notice of noncompliance under this section, the director shall determine whether cause exists for the imposition of a civil penalty. Unless the director determines that the noncompliance was unintentional or the result of a clerical error and subject to the administrative proceedings under subsection (g) of this section, the director shall commence an action in the workers' compensation court to assess a civil penalty against the employer as set forth in subsection (a) of this section and shall refer the matter to the attorney general for prosecution of criminal charges.

(2) The director shall bring a civil action in the workers' compensation court to collect all payments and penalties ordered and not paid. All civil actions for any violations of this chapter or of any of the rules or regulations promulgated by the director, or for the collection of payments in accordance with section 28-37-13, 28-33-17.3(a)(2) or 28-33-17.3(a)(3) or civil penalties under this chapter, shall be prosecuted by any qualified member of the Rhode Island bar whom the director may designate, in the name of the director, and the director is exempt from giving surety for costs in any proceedings.

(g) In the case of unintentional noncompliance or noncompliance resulting from clerical error where the uninsured period is less than one year from the date of discovery and there were no employees injured during the uninsured period and the employer has not been subject to any other findings of noncompliance with these chapters, the director shall assess an administrative penalty of not less than the estimated annual workers' compensation insurance premium for that

employer and not more than triple that amount. Any party has the right to appeal the orders of the director. Such appeal shall be to the workers' compensation court in the first instance and thereafter from the workers' compensation court to the Rhode Island supreme court in accordance with section 28-35-30.

(h) The director shall collect all payments under this chapter under the rules and regulations that may be set forth by the director. All fines collected pursuant to this section shall be deposited to a restricted receipt account to be administered by the director of the department of labor and training in his or her sole discretion to carry out chapters 29 -- 38 of this title.

(i) (1) In that the operation of a commercial enterprise without the required workers' compensation insurance is a crime and creates a clear and present danger of irreparable harm to employees who are injured while the employer is uninsured, the director shall suspend the operation of the business immediately and until workers' compensation and employers' liability insurance is secured consistent with these chapters. The director shall lift the suspension upon receipt of satisfactory proof of insurance and evidence sufficient to satisfy the director that the employer is in full compliance with these chapters. Any party has the right to appeal the suspension to the workers' compensation court where the matter shall proceed pursuant to the workers' compensation court rules of procedure.

(2) In the event that the employer shall fail to comply with the director's order of suspension, the director may apply immediately to the workers' compensation court for an order directing the employer to comply with the director's prior orders.

(3) Actions filed with the workers' compensation court pursuant to this section shall not be subject to a pretrial conference in accordance with section 28-35-20 but shall be assigned consistent with the workers' compensation court rules of procedure.

(4) Interest shall accrue on unpaid penalties during the pendency of any appeal at the rate per annum provided in section 9-21-10.

(j) These provisions shall take effect upon passage except section 28-29-2(6)(iv) which shall take effect on January 1, 2006.

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, ~~2009~~ 2010, 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.

SECTION 5. This act shall take effect upon passage with the exception of the amendments contained within section 28-29-7.2 in Section 1 shall take effect on January 1, 2009.

This act shall not abrogate or affect substantive rights or pre-existing agreements, preliminary

determinations, orders or decrees; provided, however, that the amendments contained within sections 28-29-2 in Section 1 and 28-33-18 in Section 2 shall be applied retroactively to December 22, 2007 regardless of the date of injury. All other sections of this act shall take effect upon passage.

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