

2021 -- H 6249 SUBSTITUTE A

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY --
GENERAL PROVISIONS

Introduced By: Representatives McEntee, Carson, Felix, Cortvriend, Phillips, Costantino,
Giraldo, Fogarty, Caldwell, and Kazarian

Date Introduced: April 16, 2021

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-42-3 of the General Laws in Chapter 28-42 entitled "Employment
2 Security - General Provisions" is hereby amended to read as follows:

3 **28-42-3. Definitions.**

4 The following words and phrases, as used in chapters 42 -- 44 of this title, have the
5 following meanings unless the context clearly requires otherwise:

6 (1) "Administration account" means the employment security administration account
7 established by this chapter;

8 (2) "Average weekly wage" means the amount determined by dividing the individual's total
9 wages earned for service performed in employment within his or her base period by the number of
10 that individual's credit weeks within his or her base period;

11 (3) "Base period," with respect to an individual's benefit year, means the first four (4), of
12 the most recently completed five (5) calendar quarters immediately preceding the first day of an
13 individual's benefit year. For any individual's benefit year, and for any individual deemed
14 monetarily ineligible for benefits for the "base period" as defined in this subdivision, the department
15 shall make a re-determination of entitlement based upon the alternate, base period that consists of
16 the last four (4) completed calendar quarters immediately preceding the first day of the claimant's
17 benefit year. Notwithstanding anything contained to the contrary in this subdivision, the base period
18 shall not include any calendar quarter previously used to establish a valid claim for benefits;

1 provided, that notwithstanding any provision of chapters 42 -- 44 of this title to the contrary, for
2 the benefit years beginning on or after October 4, 1992, whenever an individual who has received
3 workers' compensation benefits is entitled to reinstatement under § 28-33-47, but the position to
4 which reinstatement is sought does not exist or is not available, the individual's base period shall
5 be determined as if the individual filed for benefits on the date of the injury;

6 (4) "Benefit" means the money payable to an individual as compensation for his or her
7 wage losses due to unemployment as provided in these chapters;

8 (5) "Benefit credits" means the total amount of money payable to an individual as benefits,
9 as determined by § 28-44-9;

10 (6) "Benefit rate" means the money payable to an individual as compensation, as provided
11 in chapters 42 -- 44 of this title, for his or her wage losses with respect to any week of total
12 unemployment;

13 (7) "Benefit year," with respect to any individual who does not already have a benefit year
14 in effect and who files a valid claim for benefits, means fifty-two (52) consecutive calendar weeks,
15 the first of which shall be the week containing the day as of which he or she first files a valid claim
16 in accordance with regulations adopted as hereinafter prescribed; provided, that the benefit year
17 shall be fifty-three (53) weeks if the filing of a new, valid claim would result in overlapping any
18 quarter of the base period of a prior new claim previously filed by the individual. In no event shall
19 a new benefit year begin prior to the Sunday next following the end of the old benefit year;

20 (8) "Calendar quarter" means the period of three (3) consecutive calendar months ending
21 March 31, June 30, September 30, and December 31; or the equivalent thereof, in accordance with
22 regulations as subsequently prescribed;

23 (9) "Contributions" means the money payments to the state employment security fund
24 required by those chapters;

25 (10) "Credit amount," effective July 6, 2014, means earnings by the individual in an amount
26 equal to at least eight (8) times the individual's weekly benefit rate.

27 (11) "Credit week," prior to July 1, 2012, means any week within an individual's base
28 period in which that individual earned wages amounting to at least twenty (20) times the minimum
29 hourly wage as defined in chapter 12 of this title for performing services in employment for one or
30 more employers subject to chapters 42 -- 44 of this title, and for the period July 1, 2012, through
31 July 5, 2014, means any week within an individual's base period in which that individual earned
32 wages amounting to at least his or her weekly benefit rate for performing services in employment
33 for one or more employers subject to chapters 42 -- 44 of this title;

34 (12) "Crew leader," for the purpose of subdivision (19) of this section, means an individual

1 who:

2 (i) Furnishes individuals to perform service in agricultural labor for any other person;

3 (ii) Pays (either on his or her own behalf or on behalf of that other person) the individuals

4 so furnished by him or her for the service in agricultural labor performed by them; and

5 (iii) Has not entered into a written agreement with that other person (farm operator) under

6 which that individual (crew leader) is designated as an employee of that other person (farm

7 operator).

8 (13) "Director" means the head of the department of labor and training or his or her

9 authorized representative;

10 (14) "Domestic service employment." "Employment" includes domestic service in a

11 private home performed for a person who paid cash remuneration of one thousand dollars (\$1,000)

12 or more in any calendar quarter in the current calendar year, or the preceding calendar year, to

13 individuals employed in that domestic service;

14 (15) "Employee" means any person who is, or has been, employed by an employer subject

15 to those chapters and in employment subject to those chapters;

16 (16) "Employer" means:

17 (i) Any employing unit that was an employer as of December 31, 1955;

18 (ii) Any employing unit that for some portion of a day on and after January 1, 1956, has,

19 or had, in employment, within any calendar year, one or more individuals; except, however, for

20 "domestic service employment," as defined in subdivision (14) of this section;

21 (iii) For the effective period of its election pursuant to § 28-42-12, any other employing

22 unit that has elected to become subject to chapters 42 -- 44 of this title;

23 (iv) Any employing unit not an employer by reason of any other paragraph of this

24 subdivision for which, within either the current or preceding calendar year, service is, or was,

25 performed with respect to which that employing unit is liable for any federal tax against which

26 credit may be taken for contributions required to be paid into this state's employment security fund;

27 or which, as a condition for approval of chapters 42 -- 44 of this title for full tax credit against the

28 tax imposed by the Federal Unemployment Tax Act, 26 U.S.C. § 3301 et seq., is required, pursuant

29 to that act, to be an "employer" under chapters 42 -- 44 of this title;

30 (17) "Employing unit" means any person, partnership, association, trust, estate, or

31 corporation, whether domestic or foreign, or its legal representative, trustee in bankruptcy, receiver,

32 or trustee, or the legal representative of a deceased person, that has, or had, in his or her employ,

33 one or more individuals. For the purposes of subdivision (14) of this section, a private home shall

34 be considered an employing unit only if the person for whom the domestic service was performed

1 paid cash remuneration of one thousand dollars (\$1,000) or more in any calendar quarter in the
2 current calendar year, or the preceding calendar year, to individuals employed in that domestic
3 service in that private home;

4 (18)(i) "Employment," subject to §§ 28-42-4 -- 28-42-10, means service, including service
5 in interstate commerce, performed for wages, or under any contract of hire, written or oral, express
6 or implied; provided, that service performed shall also be deemed to constitute employment for all
7 the purposes of chapters 42 -- 44 of this title if performed by an individual in the employ of a
8 nonprofit organization as described in subdivision (25) of this section, except as provided in § 28-
9 42-8(7).

10 (ii) Notwithstanding any other provisions of this section, "Employment" also means service
11 with respect to which a tax is required to be paid under any federal law imposing a tax against
12 which credit may be taken for contributions required to be paid into this state's employment security
13 fund or which, as a condition for full tax credit against the tax imposed by the Federal
14 Unemployment Tax Act, is required to be covered under chapters 42 -- 44 of this title;

15 (iii) Employment not to include owners. Employment does not include services performed
16 by sole proprietors (owners), partners in a partnership, limited liability company -- single member
17 filing as a sole proprietor with the IRS, or members of a limited liability company filing as a
18 partnership with the IRS.

19 (19) "Employment -- Crew leader." For the purposes of subdivision (12) of this section:

20 (i) Any individual who is a member of a crew furnished by a crew leader to perform service
21 in agricultural labor for any other person shall be treated as an employee of that crew leader if:

22 (A) That crew leader holds a valid certificate of registration under the Migrant and Seasonal
23 Agricultural Worker Protection Act, 29 U.S.C. § 1801 et seq., or substantially all members of that
24 crew operate or maintain tractors, mechanized harvesting, or crop-dusting equipment, or any other
25 mechanized equipment that is provided by that crew leader; and

26 (ii) That individual is not an employee of that other person within the meaning of
27 subdivision (15) of this section; and

28 (iii) In the case of any individual who is furnished by a crew leader to perform service in
29 agricultural labor for any other person and who is not treated as an employee of that crew leader:

30 (A) That other person, and not the crew leader, shall be treated as the employer of that
31 individual; and

32 (B) That other person shall be treated as having paid cash remuneration to that individual
33 in an amount equal to the amount of cash remuneration paid to that individual by the crew leader
34 (either on his or her own behalf or on behalf of that other person) for the service in agricultural

1 labor performed for that other person;

2 (20) "Employment office" means a free, public-employment office, or its branch, operated

3 by the director or by this state as part of a system of free, public-employment offices, or any other

4 agency that the director may designate with the approval of the Social Security Administration;

5 (21) "Fund" means the employment security fund established by this chapter;

6 (22) "Governmental entity" means state and local governments in this state and includes

7 the following:

8 (i) The state of Rhode Island or any of its instrumentalities, or any political subdivision of

9 the state, or any of its instrumentalities;

10 (ii) Any instrumentality of more than one of these entities; or

11 (iii) Any instrumentality of any of these entities and one or more other states or political

12 subdivisions;

13 (23) "Hospital" means an institution that has been licensed, certified, or approved by the

14 department of health as a hospital;

15 (24)(i) "Institution of higher education" means an educational institution in this state that:

16 (A) Admits, as regular students, only individuals having a certificate of graduation from a

17 high school, or the recognized equivalent of such certificate;

18 (B) Is legally authorized within this state to provide a program of education beyond high

19 school;

20 (C) Provides:

21 (I) An educational program for which it awards a bachelor's or higher degree, or a program

22 that is acceptable for full credit toward such a degree;

23 (II) A program of post-graduate or post-doctoral studies; or

24 (III) A program of training to prepare students for gainful employment in a recognized

25 occupation; and

26 (D) Is a public or other nonprofit institution.

27 (ii) Notwithstanding any of the preceding provisions of this subdivision, all colleges and

28 universities in this state are institutions of higher education for purposes of this section;

29 (25) "Nonprofit organization" means an organization, or group of organizations, as defined

30 in 26 U.S.C. § 501(c)(3), that is exempt from income tax under 26 U.S.C. § 501(a);

31 (26)(i) "Partial unemployment." An employee shall be deemed partially unemployed in any

32 week of less than full-time work if ~~he or she fails~~ [they fail](#) to earn in wages for that week an amount

33 equal to the weekly benefit rate for total unemployment to which ~~he or she~~ [they](#) would be entitled

34 if totally unemployed and eligible. [For weeks beginning on or after May 23, 2021, through June](#)

1 30, 2022, an employee shall be deemed partially unemployed in any week of less than full-time
2 work if they fail to earn wages for that week in an amount equal to or greater than one hundred and
3 fifty percent (150%) of the weekly benefit rate for total unemployment to which they would be
4 entitled if totally unemployed and eligible.

5 (ii) For the purposes of this subdivision and subdivision (28) of this section, "Wages"
6 includes only that part of remuneration for any work that is in excess of one-fifth (1/5) of the weekly
7 benefit rate for total unemployment, rounded to the next lower multiple of one dollar (\$1.00), to
8 which the individual would be entitled if totally unemployed and eligible in any one week, and
9 "services" includes only that part of any work for which remuneration in excess of one-fifth (1/5)
10 of the weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar
11 (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one
12 week is payable; provided, that nothing contained in this paragraph shall permit any individual to
13 whom remuneration is payable for any work performed in any week in an amount equal to or greater
14 than his or her weekly benefit rate to receive benefits under this subdivision for that week.

15 (iii) Notwithstanding the foregoing, for weeks ending on or after May 23, 2021, through
16 June 30, 2022, "wages" includes only that part of remuneration for any work that is in excess of
17 fifty percent (50%) of the weekly benefit rate for total unemployment, rounded to the next lower
18 multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed and
19 eligible in any one week, and "services" includes only that part of any work for which remuneration
20 in excess of fifty percent (50%) of the weekly benefit rate for total unemployment, rounded to the
21 next lower multiple of one dollar (\$1.00), to which the individual would be entitled if totally
22 unemployed and eligible in any one week is payable. Provided, that, during the period defined in
23 this subdivision, nothing contained in this subdivision shall permit any individual to whom
24 remuneration is payable for any work performed in any week in an amount equal to or greater than
25 one-hundred-fifty percent (150%) of their weekly benefit rate to receive benefits under this
26 subdivision for that week.

27 ~~(iii)~~(iv) Notwithstanding anything contained to the contrary in this subdivision, "Services,"
28 as used in this subdivision and in subdivision (28) of this section, does not include services rendered
29 by an individual under the exclusive supervision of any agency of this state, or any of its political
30 subdivisions, by which the services are required solely for the purpose of affording relief, support,
31 or assistance to needy individuals performing those services, or services performed by members of
32 the national guard and organized reserves in carrying out their duties in weekly drills as members
33 of those organizations. "Wages," as used in this subdivision and in subdivision (28) of this section,
34 does not include either remuneration received by needy individuals for rendering the

1 aforementioned services when that remuneration is paid exclusively from funds made available for
2 that purpose out of taxes collected by this state or any of its political subdivisions, or remuneration
3 received from the federal government by members of the national guard and organized reserves, as
4 drill pay, including longevity pay and allowances;

5 (27) "Payroll" means the total amount of all wages paid by the employer to his or her
6 employees for employment;

7 (28) "Total unemployment." An individual shall be deemed totally unemployed in any
8 week in which he or she performs no services (as used in subdivision (26) of this section) and for
9 which he or she earns no wages (as used in subdivision (26) of this section), and in which he or she
10 cannot reasonably return to any self-employment in which he or she has customarily been engaged;

11 (29) "Wages" means all remuneration paid for personal services on or after January 1, 1940,
12 including commissions and bonuses and the cash value of all remuneration paid in any medium
13 other than cash, and all other remuneration that is subject to a tax under a federal law imposing a
14 tax against which credit may be taken for contributions required to be paid into a state
15 unemployment fund. Gratuities customarily received by an individual in the course of his or her
16 employment from persons other than his or her employing unit shall be treated as wages paid by
17 his or her employing unit. The reasonable cash value of remuneration paid in any medium other
18 than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance
19 with rules prescribed by the director; except that for the purpose of this subdivision and of §§ 28-
20 43-1 -- 28-43-14, this term does not include:

21 (i) That part of remuneration that is paid by an employer to an individual with respect to
22 employment during any calendar year, after remuneration equal to the amount of the taxable wage
23 base as determined in accordance with § 28-43-7 has been paid during that calendar year by the
24 employer or his or her predecessor to that individual; provided, that if the definition of "Wages" as
25 contained in the Federal Unemployment Tax Act is amended to include remuneration in excess of
26 the taxable wage base for that employment, then, for the purposes of §§ 28-43-1 -- 28-43-14,
27 "Wages" includes the remuneration as previously set forth, up to an amount equal to the dollar
28 limitation specified in the federal act. For the purposes of this subdivision, "Employment" includes
29 services constituting employment under any employment security law of another state or of the
30 federal government;

31 (ii) The amount of any payment made to, or on behalf of, an employee under a plan or
32 system established by an employer that makes provision for his or her employees generally, or for
33 a class or classes of his or her employees (including any amount paid by an employer or an
34 employee for insurance or annuities, or into a fund, to provide for any such payment), on account

- 1 of:
- 2 (A) Retirement;
- 3 (B) Sickness or accident disability;
- 4 (C) Medical and hospitalization expenses in connection with sickness or accident
- 5 disability; or
- 6 (D) Death; provided, that the employee has not the:
- 7 (I) Option to receive, instead of provision for that death benefit, any part of that payment
- 8 or, if that death benefit is insured, any part of the premiums (or contributions to premiums) paid by
- 9 his or her employer; and
- 10 (II) Right, under the provisions of the plan or system or policy of insurance providing for
- 11 that death benefit, to assign that benefit, or to receive a cash consideration in lieu of that benefit
- 12 either upon his or her withdrawal from the plan or system providing for that benefit or upon
- 13 termination of the plan or system or policy of insurance, or of his or her employment with that
- 14 employer.
- 15 (E) The payment by an employer (without deduction from the remuneration of the
- 16 employee) of:
- 17 (I) The tax imposed upon an employee under 26 U.S.C. § 3101; or
- 18 (II) Any payment required from an employee under chapters 42 -- 44 of this title.
- 19 (iii) Any amount paid by an employee, or an amount paid by an employer, under a benefit
- 20 plan organized under Internal Revenue Code [26 U.S.C. § 125].
- 21 (30) "Week" means the seven-day (7) calendar week beginning on Sunday at 12:01 A.M.
- 22 and ending on Saturday at 12:00 A.M. midnight.

23 SECTION 2. Section 28-44-7 of the General Laws in Chapter 28-44 entitled "Employment

24 Security - Benefits" is hereby amended to read as follows:

25 **28-44-7. Partial unemployment benefits.**

26 For weeks beginning on or after July 1, 1983, an individual partially unemployed and

27 eligible in any week shall be paid sufficient benefits with respect to that week, so that his or her

28 week's wages, rounded to the next higher multiple of one dollar (\$1.00), as defined in § 28-42-

29 ~~3(25)~~(26) , and his or her benefits combined will equal in amount the weekly benefit rate to which

30 he or she would be entitled if totally unemployed in that week. For weeks beginning on or after

31 May 23, 2021, through June 30, 2022, an individual partially unemployed and eligible in any week

32 shall be paid benefits in an amount equal to the weekly benefit rate to which they would be entitled

33 if totally unemployed in that week less any wages earned in that week, as defined in § 28-42-3(26).

34 and their benefits combined may not exceed in amount one hundred and fifty percent (150%) of

1 [the individual's weekly benefit rate.](#)

2 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY --
GENERAL PROVISIONS

1 This act would increase the total amount of earnings a partial unemployment claimant can
2 receive before complete disqualification for unemployment benefits and would increase the
3 disregarded amount of earnings when calculating a weekly benefit rate. The provisions of this act
4 would expire on June 30, 2022.

5 This act would take effect upon passage.

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