

2015 -- S 0759 SUBSTITUTE A

=====
LC001782/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

—————
A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY
BENEFITS

Introduced By: Senators Lombardi, Jabour, Conley, Lombardo, and Archambault

Date Introduced: March 24, 2015

Referred To: Senate Labor

(Labor & Training)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-42-8 and 28-42-62.1 of the General Laws in Chapter 28-42
2 entitled "Employment Security - General Provisions" are hereby amended to read as follows:

3 **28-42-8. Exemptions from "employment".** -- "Employment" does not include:

4 (1) Domestic service in a private home performed for a person who did not pay cash
5 remuneration of one thousand dollars (\$1,000) or more in any calendar quarter after December
6 31, 1977, in the current calendar year, or the preceding calendar year to individuals employed in
7 that domestic service in a private home;

8 (2) Service performed by an individual in the employ of a sole proprietorship or LLC
9 single member filing as a sole proprietorship with the IRS for his or her son, daughter, or spouse,
10 and service performed by a child under the age of eighteen (18) in the employ of his or her father
11 or mother who is designated as a sole proprietorship or LLC single-member filing as a sole
12 proprietorship with the IRS, and service is performed by an individual under the age of eighteen
13 (18) in the employ of a partnership or LLC partnership consisting only of his or her parents or
14 domestic partners;

15 (3) Service performed in the employ of any other state, or any of its political
16 subdivisions, the United States government, an instrumentality of any other state or states or their
17 political subdivisions, or of an instrumentality of the United States, except, that if the Congress of
18 the United States permits states to require any instrumentalities of the United States to make

1 payments into an unemployment fund under a state unemployment compensation act, then, to the
2 extent permitted by Congress, and from and after the date as of which permission becomes
3 effective, all of the provisions of chapters 42 -- 44 of this title shall be applicable to those
4 instrumentalities and to services performed for those instrumentalities, in the same manner, to the
5 same extent, and on the same terms, as to all other employers, employing units, individuals, and
6 services. If this state is not certified by the Secretary of Labor under 26 U.S.C. § 3304 for any
7 year, then the payments required of those instrumentalities with respect to that year shall be
8 deemed to have been erroneously collected within the meaning of § 28-43-12 and shall be
9 refunded by the director from the fund in accordance with § 28-43-12;

10 (4) Service performed:

11 (i) In the employ of:

12 (A) A church or convention or association of churches, or

13 (B) An organization that is operated primarily for religious purposes and that is operated,
14 supervised, controlled, or principally supported by a church or convention or association of
15 churches;

16 (ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of
17 his or her ministry or by a member of a religious order in the exercise of duties required by that
18 order;

19 (iii) In a facility conducted for the purpose of carrying out a program of rehabilitation for
20 individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or
21 providing remunerative work for individuals who, because of their impaired physical or mental
22 capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving
23 that rehabilitation or remunerative work;

24 (iv) As part of an unemployment work relief or work-training program assisted or
25 financed in whole, or in part, by any federal agency or an agency of a state or one of its political
26 subdivisions, by an individual receiving that work relief or work training;

27 (v) In the employ of a hospital by a patient of the hospital; or

28 (vi) By an inmate of a custodial or penal institution;

29 (5) Service with respect to which unemployment compensation is payable under an
30 unemployment compensation system established by an act of Congress. The director is authorized
31 and directed to enter into agreements with the proper agencies under that act of Congress, which
32 agreements shall become effective ten (10) days after their publication as in the manner provided
33 in § 28-42-34, to provide reciprocal treatment to individuals who have, after acquiring potential
34 rights to benefits under chapters 42 -- 44 of this title, acquired rights to unemployment

1 compensation under that act of Congress, or who have, after acquiring potential rights to
2 unemployment compensation under that act of Congress, acquired rights to benefits under those
3 chapters;

4 (6) Service covered by an election duly approved by the agency charged with the
5 administration of any other state or federal employment security law in accordance with an
6 arrangement pursuant to § 28-42-58 during the effective period of that election, except as
7 provided in § ~~28-42-3(15)(i)~~ [28-42-3\(16\)\(i\)](#);

8 (7) Services performed by an individual, in any calendar quarter on or after January 1,
9 1972, in the employ of any organization exempt from income tax under 26 U.S.C. § 501(a)(other
10 than services performed for an organization defined in § ~~28-42-3(24)~~ [28-42-3\(25\)](#) or for any
11 organization described in 26 U.S.C. § 401(a) or under 26 U.S.C. § 521) if the remuneration for
12 that service is less than fifty dollars (\$50.00);

13 (8) Service that is occasional, incidental, and occurs irregularly, and is not in the course
14 of the employing unit's trade or business. Service for a corporation shall not be excluded;

15 (9) Service as a golf caddy, except as to service performed solely for a club with respect
16 to which the club alone bears the expense. A golf caddy, except as in this specifically provided
17 subdivision, shall not be construed to be an "employee" as defined in § ~~28-42-3(14)~~ [28-42-3\(15\)](#);

18 (10) Notwithstanding any provisions of titles 5 and 27, service performed by an
19 individual as a real estate salesperson if all the service performed by that individual is performed
20 for remuneration solely by way of commission;

21 (11) Notwithstanding any provisions of titles 5 and 27, service performed by an
22 individual as an insurance broker, agent, or subagent if all the service performed by that
23 individual is performed for remuneration solely by way of commission. This exemption shall not
24 apply to service performed as industrial and debit insurance agents;

25 (12) Service performed by an individual who is enrolled at a nonprofit or public
26 educational institution that normally maintains a regular faculty and curriculum and normally has
27 a regular organized body of students in attendance at the place where its educational activities are
28 carried on, as a student in a full-time program, taken for credit at that institution that combines
29 academic instruction with work experience, if that service is an integral part of that program, and
30 that institution has so certified to the employer, except that this subdivision shall not apply to
31 service performed in a program established for, or on behalf of, an employer or group of
32 employers;

33 (13) Service performed by an individual on a boat engaged in catching fish or other
34 forms of aquatic animal life under an arrangement with the owner or operator of that boat

1 pursuant to which:

2 (i) That individual does not receive any cash remuneration other than a share of the
3 boat's catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale
4 of that catch; and

5 (ii) The operating crew of that boat is normally made up of fewer than ten (10)
6 individuals; ~~and~~

7 (14) Services performed by a member of an Americorps program; ~~and~~

8 [\(15\) Services performed by a self-employed individual.](#)

9 **28-42-62.1. Fraud and abuse.** -- (a) (1) It shall be unlawful to do any of the following:

10 (A) Make or cause to be made any knowingly false or fraudulent material statement or
11 material representation for the purpose of obtaining or denying any benefits;

12 (B) Present or cause to be presented any knowingly false or fraudulent written or oral
13 material statement in support of, or in opposition to, any claim for benefits or petition regarding
14 the continuation, termination or modification of benefits;

15 (C) Knowingly assist, aid and abet, solicit, or conspire with any person who engages in
16 an unlawful act under this section;

17 (D) Willfully misrepresent or fail to disclose any material fact in order to avoid or reduce
18 any contribution or other payment required of an employing unit under chapters 42 -- 44 of this
19 title;

20 (E) Willfully fail to report or provide false or misleading information regarding
21 ownership changes as required by regulations promulgated by the department.

22 (F) Willfully make or require any deduction from wages to pay all or any portion of the
23 contributions required from employers, or try to induce any individual to waive any right under
24 chapters 42-44 of this title.

25 (2) For purposes of this section, "statement" includes, but is not limited to, [the receipt of](#)
26 [unemployment benefits deposited to a direct deposit account or electronic payment card,](#) any
27 endorsement of a benefit check, application for registration, oral or written statement or report,
28 proof of unemployment, or other documentation offered as proof of, or the absence of,
29 entitlement to benefits or the amount of benefits.

30 (3) If it is determined that any person concealed or knowingly failed to disclose that
31 which is required by law to be revealed, knowingly gave or used perjured testimony or false
32 evidence, knowingly made a false statement of fact, participated in the creation or presentation of
33 evidence which he knows to be false, or otherwise engaged in conduct in violation of this section,
34 that person shall be guilty of a misdemeanor and subject in criminal proceedings to a fine and/or

1 penalty not exceeding one thousand dollars (\$1,000), or double the value of the fraud, whichever
2 is greater, or by imprisonment up to one year in state prison, or both.

3 (4) Beginning October 1, 2013, whenever the director establishes that an erroneous
4 payment was made to an individual due to fraud committed by the individual, that individual will
5 be assessed a penalty equal to fifteen percent (15%) of the amount of the erroneous payment. All
6 penalties assessed and collected under this subsection shall be immediately deposited into the
7 employment security fund.

8 (b) The director, in consultation with the attorney general, shall establish a form to give
9 notice that the endorsement of a benefit check sent [or the receipt of unemployment benefits](#)
10 [deposited to a direct deposit account or electronic payment card](#) pursuant to chapter 44 of this title
11 is the endorser's affirmation that he or she is qualified to receive benefits under the employment
12 security act. The notice shall be sent to all individuals who are presently receiving benefits and
13 given to those who file claims for benefits in the future.

14 SECTION 2. Sections 28-44-12, 28-44-18 and 28-44-38 of the General Laws in Chapter
15 28-44 entitled "Employment Security - Benefits" are hereby amended to read as follows:

16 **28-44-12. Availability and registration for work.** -- (a) An individual shall not be
17 eligible for benefits for any week of his or her partial or total unemployment unless during that
18 week he or she is physically able to work [full-time](#) and [be](#) available for [full-time](#) work. To prove
19 availability for work, every individual partially or totally unemployed shall register for work and
20 shall:

21 (1) File a claim for benefits within any time limits, with any frequency, and in any
22 manner, in person or in writing, as the director may prescribe;

23 (2) Respond whenever duly called for work through the employment office; and

24 (3) Make an active, independent search for suitable [full-time](#) work.

25 (b) If an unemployed individual has been determined to be likely to exhaust regular
26 benefits and to need reemployment services pursuant to a profiling system established by the
27 director, the individual shall be eligible to receive benefits with respect to any week only if the
28 individual participates in reemployment services, such as job search assistance services, unless
29 the director determines that:

30 (1) The individual has completed those services; or

31 (2) There is justifiable cause for the individual's failure to participate in those services.

32 **28-44-18. Discharge for misconduct.** -- (a) For benefit years beginning prior to July 1,
33 2012, an individual who has been discharged for proved misconduct connected with his or her
34 work shall become ineligible for waiting period credit or benefits for the week in which that

1 discharge occurred and until he or she establishes to the satisfaction of the director that he or she
2 has, subsequent to that discharge, had at least eight (8) weeks of work, and in each of that eight
3 (8) weeks has had earnings of at least twenty (20) times the minimum hourly wage as defined in
4 chapter 12 of this title for performing services in employment for one or more employers subject
5 to chapters 42 -- 44 of this title. For benefit years beginning on or after July 1, 2012, and prior to
6 July 6, 2014, an individual who has been discharged for proved misconduct connected with his or
7 her work shall become ineligible for waiting period credit or benefits for the week in which that
8 discharge occurred and until he or she establishes to the satisfaction of the director that he or she
9 has, subsequent to that discharge, had at least eight (8) weeks of work, and in each of that eight
10 (8) weeks has had earnings greater than, or equal to, his or her weekly benefit rate for performing
11 services in employment for one or more employers subject to chapters 42 -- 44 of this title. For
12 benefit years beginning on or after July 6, 2014, an individual who has been discharged for
13 proved misconduct connected with his or her work shall become ineligible for waiting-period
14 credit or benefits for the week in which that discharge occurred and until he or she establishes to
15 the satisfaction of the director that he or she has, subsequent to that discharge, had earnings
16 greater than, or equal to eight (8) times, his or her weekly benefit rate for performing services in
17 employment for one or more employers subject to chapters 42 -- 44 of this title. Any individual
18 who is required to leave his or her work pursuant to a plan, system, or program, public or private,
19 providing for retirement, and who is otherwise eligible, shall under no circumstances be deemed
20 to have been discharged for misconduct. If an individual is discharged and a complaint is issued
21 by the regional office of the National Labor Relations board or the state labor relations board that
22 an unfair labor practice has occurred in relation to the discharge, the individual shall be entitled to
23 benefits if otherwise eligible. For the purposes of this section, "misconduct" is defined as
24 deliberate conduct in willful disregard of the employer's interest, or a knowing violation of a
25 reasonable and uniformly enforced rule or policy of the employer, provided that such violation is
26 not shown to be as a result of the employee's incompetence. Notwithstanding any other provisions
27 of chapters 42 -- 44 of this title, this section shall be construed in a manner that is fair and
28 reasonable to both the employer and the employed worker.

29 [\(b\) For the purposes of chapters 42 through 44 of this title, a suspension without pay from](#)
30 [work for proved misconduct shall be treated as a discharge for proved misconduct and subject to](#)
31 [the same conditions as a discharge for proved misconduct in accordance with subsection \(a\) of](#)
32 [this section.](#)

33 **28-44-38. Filing of claims -- Procedures -- Printed copies -- Notices.** -- (a) Claims for
34 waiting period credit and for benefits shall be filed in accordance with regulations adopted as

1 prescribed. Each employer shall post and maintain printed copies or statements of those
2 regulations in places readily accessible to individuals employed by him or her. The director shall
3 supply each employer with copies of those regulations or statements of the regulations without
4 cost to the employers.

5 (b) The director shall prescribe the type of reports required from employers and the
6 manner in which the reports shall be presented.

7 (c) Upon the filing of a claim, the director shall promptly ~~mail a notice of the filing of~~
8 ~~the claim to the claimant's~~ notify the most recent employer and to all employers for whom the
9 claimant states he or she performed services and earned wages during his or her base period. The
10 employers shall promptly furnish the information required to determine the claimant's benefit
11 rights. If the claimant's employer or employers have any information which might affect either
12 the validity of the claim or the right of the claimant to waiting period credit or benefits, he or she
13 shall return the notice with that information. If an employer fails without good cause as
14 established to the satisfaction of the director to return this notice within ~~seven (7)~~ ten (10)
15 working days of its mailing, the employer shall have no standing to contest any determination to
16 be made by the director with respect to the claim and any benefit charges pursuant to it, and the
17 employer shall be barred from being a party to any further proceedings relating to the claim.
18 Notwithstanding any inconsistent provisions of chapters 42 -- 44 of this title, any employer who
19 fails to return the notice within that time shall pay a penalty of twenty-five dollars (\$25.00) for
20 each failure. The preceding penalty shall be paid into the employment security tardy account
21 fund, and if any employer fails to pay the penalty, when assessed, it shall be collected by civil
22 action as provided in § 28-43-18.

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

=====
LC001782/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- EMPLOYMENT SECURITY
BENEFITS

1 This act would exempt services performed by self-employed individuals from the
2 definitions of employment for employment security benefit purposes. It would also allow
3 unemployment benefit checks to be directly deposited to an account or through the use of an
4 electronic payment card. It would clarify the law so that workers that work full-time would be
5 ineligible for unemployment benefits. Finally, it would render employees who are suspended
6 without pay from work at the time of their discharge from being eligible for unemployment
7 benefits.

8 This act would take effect upon passage.

=====
LC001782/SUB A
=====