

Rhode Island Statutes



Relating to Workers' Compensation Adjuster Exam

27-10-7 Term of license – Renewal – Suspension or revocation.

The insurance commissioner shall promulgate rules and regulations mandating the term of licensure for any claim adjuster license. No license shall remain in force for a period in excess of four (4) years. Nothing in this section shall be construed to limit the authority of the insurance commissioner to sooner suspend or revoke any claim adjuster license. Any action for suspension or revocation of any claim adjuster license shall be in accordance with the Administrative Procedures Act, chapter 35 of title 42, upon proof that the license was obtained by fraud or misrepresentation, or that the interests of the insurer or the interests of the public are not properly served under the license, or for cause. No claim adjuster license shall be issued by the commissioner to a person whose license has been suspended or revoked within three (3) years from the date of that revocation or suspension. Each license shall be renewed upon payment of a fee assessed at an annual rate of fifty dollars (\$50.00). The fee for the total term of licensure shall be payable at the time of renewal.

27-10-9 Investigative and subpoena powers.

(a) The insurance commissioner shall have the power to examine and investigate into the affairs of every person engaged in the business of negotiating adjustments of insurance claims and claims under fidelity and surety bonds.

(b) The insurance commissioner, upon a hearing, may administer oaths, examine and cross examine witnesses, and receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which the commissioner deems relevant to the inquiry.

27-10-10 Orders for discontinuance of unlawful practices.

If, after a hearing, the commissioner finds that the furnishing of any information or assistance to a claims adjuster involves any act or practice which is unfair or unreasonable or inconsistent with the provisions of this chapter, the commissioner may issue a written order specifying in what respects that act or practice is unfair or unreasonable or inconsistent with the provisions of this chapter, and requiring the discontinuance of that act or practice.

27-10-11 Penalty for violations.

Any person who acts as an insurance claim adjuster, other than for life and accident and health insurance, without holding a current valid license as provided in this chapter, or shall act in any manner in the negotiation of any insurance claim agreement in violation of any provision of this chapter, shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than three (3) months, or both, for each offense. In addition, the insurance commissioner shall be empowered to revoke or suspend any license issued under this chapter for the violation of this chapter, as provided in § 27-10-7.

27-10-13 Rules and regulations.

The insurance commissioner shall have the authority to promulgate all reasonable rules and regulations necessary to effect and to enforce the purposes and provisions of this chapter.

27-29-4 Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance: ...*(13) Failure to maintain complaint handling procedures.* No insurer shall fail to maintain a complete record of all the complaints it received since the date of its last examination pursuant to the general laws providing for examination of insurers. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For the purposes of this subsection, "complaint" means any written communication primarily expressing a grievance;...

27-57-1 Interception of insurance payments.

(a) Every domestic insurer or insurance company authorized to issue policies of liability insurance pursuant to this title, and also any workers' compensation insurer, shall, within thirty (30) days prior to the making of any payment equal to or in excess of three thousand dollars (\$3,000) to any claimant who is a resident of the state of Rhode Island or to any claimant who has an accident or loss that occurred in the state of Rhode Island, for third party for personal injury or workers' compensation benefits under a contract of insurance, review information provided by the department of administration, division of taxation, child support enforcement pursuant to § 27-57-4 indicating whether the claimant owes past-due child support.

(b) If the insurer determines from the information provided by the department pursuant to § 27-57-4 that the claimant or payee does not owe past-due support, the insurer may make the payment to the claimant in accordance with the contract of the insurance.

(c) If the insurer determines from the information provided by the department pursuant to § 27-57-4 that the claimant or payee owes past-due child support, the insurer shall, except to the extent payments are subject to liens, written notices, or interests described in § 27-57-3, withhold from payment the amount of past-due support and pay that amount to the family court which shall credit the person's child support obligation account for the amount so paid, and the insurer shall pay the balance to the claimant or other person entitled to it; provided, that the insurer or insurance company shall provide written notice by regular mail to the claimant and his or her attorney, if any, and notice by e-mail or other electronic means, to the department of the payment to the family court. The payment shall be deposited in the registry of the family court for a period of forty-five (45) days or if an application for review has been filed pursuant to subsection (d) until further order of the court. The notice shall reflect the date, name, social security number, case number, and amount of the payment. Any insurer or insurance company, its directors, agents, and employees and central reporting organizations and their respective employees authorized by an insurer to act on its behalf who release information in

accordance with the provisions of this chapter, or who withhold amounts from payment based upon the latest information supplied by the department pursuant to § 27-57-4 and makes disbursements in accordance with § 27-57-3, shall be in compliance and shall be immune from any liability to the claimant, payee lienholder, payee who provided written notice, or security interest holder for taking that action.

(d) Any claimant aggrieved by any action taken under this section may within thirty (30) days of the making of the notice to the claimant in subsection (c) of this section, seek judicial review in the family court, which may, in its discretion, issue a temporary order prohibiting the disbursement of funds under this section, pending final adjudication.

27-57-4 Information to be provided by the department of administration, division of taxation, child support enforcement.

(a) The department shall periodically within each year furnish the insurance companies and insurers subject to this section with a list or compilation of names of individuals, with last known addresses, who as of the date of the list or compilation owe past due support in excess of five hundred dollars (\$500) as shown on the Rhode Island family court/department of administration, division of taxation, child support enforcement, child support enforcement computer system ("CSE system"). For the purposes of this section, the terms used in this section have the meaning and definitions specified in § 15-16-2.

(b) In order to facilitate the efficient and prompt reporting of those arrearages in one centralized location, it is the duty and responsibility of the insurance companies doing business in the state to utilize one centralized database to which the department shall report and administer.

28-29-2. Definitions. [Effective January 1, 2002.]

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 in chapters 29 - 38 of this title, the term "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 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 only means that class or those classes of employees that may be designated by a city, town, or regional school district in a manner as provided in this section, to receive compensation under chapters 29 - 38 of this title. It does not include any partner, sole proprietor, independent contractor, or a person whose employment is of a casual nature, and who is employed otherwise than for the purpose of the employer's trade or business, or a person whose services are voluntary or who performs charitable acts, nor does it include the members of the regularly organized fire and police departments of any town or city. 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 is not 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 remains an employee, for purposes of these chapters, unless and until coverage under these chapters is waived pursuant to § 28-29-8(b) or § 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 § 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, is reportable to the appropriate taxation authority but is not 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, where the employee is dead, includes a reference to his or her dependents as defined in these chapters, 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, copartnership, 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 and the city of Providence that votes or accepts chapters 29 - 38 of this title in the manner provided in these chapters.

(6) "General or special employer":

(i) A general employer includes, but is not limited to, temporary help companies and employee leasing companies and means a person who, for consideration and in the regular course of its business, supplies an employee with or without vehicle to another person.

(ii) A 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 and 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, in that event, notwithstanding the fact that direction and control is in the special employer and not the general employer, the general employer, if he or she is subject to the Workers' Compensation Act or has accepted that act, is deemed to be the employer as set forth in subdivision (5) and both the general and special employer are the employer for purposes of §§ 28-29-17 and 28-29-18.

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

(8) (i) "Injury" means and refers to personal injury to an employee arising out of and in the course of his or her employment connected with and referable to his or her 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 is not deemed to have arisen out of and in the course of employment. Nothing in this subdivision 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 provisions of this subdivision do not bar the right of an employee to recover against an employer and/or driver for tortious misconduct.

(9) "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 shall preclude 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.

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

(11) "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 is not considered in determining the suitability of the alternative employment.

28-29-6. Employers subject to law.

Every person, firm, and private corporation, including any public service corporation, including the state, that employs employees regularly in the same business or in or about the same establishment under any contract of hire, express or implied, and a city or town in this state that votes to accept the provisions of those chapters in the manner provided constitutes an employer subject to the provisions of chapters 29 - 38 of this title.

28-29-17. Waiver of common law rights - Notice of claim of common law right. [Effective January 1, 2002.]

An employee or corporate officer of an employer subject to or who has elected to become subject to chapters 29 - 38 of this title as provided in § 28-29-8 is held to have waived his or her right of action at common law to recover damages for personal injuries if he or she has not given his or her employer at the time of his or her contract of hire or appointment notice in writing that he or she claims that right and within ten (10) days thereafter has filed a copy of the notice with the director, or, if the contract of hire or appointment was made before the employer became subject to or elected to become subject to those chapters, if the employee or corporate officer has not given the notice and filed it with the director within ten (10) days after the filing by the employer who is subject to or who has elected to become subject to those chapters of the written statement as provided. That waiver continues in force for the term of one year, and after that year, without further act on his or her part, for successive terms of one year each, unless the employee or corporate officer, at least sixty (60) days prior to the expiration of the first or any succeeding year, files with the director a notice in writing to the effect that he or she desires to claim his or her right of action at common law and within ten (10) days after that notice gives notice of the claim to his or her employer.

28-32-1. Reports required from employers.

(a) Every employer who is or becomes subject to chapters 29 - 38 of this title shall report to the director, in writing or in any other manner specified by the director, every personal injury sustained by an employee arising out of and in the course of his or her employment connected with and referable to employment, if that injury proves fatal or incapacitates the employee from earning full wages for a period of at least three (3) days, or requires medical treatment regardless of the period of incapacity.

(b) If the injury is immediately fatal, the report shall be made within forty-eight (48) hours after it occurs; if it proves fatal later, the report shall be made within forty-eight (48) hours after death occurs and comes to the knowledge of the employer; if the injury is not fatal, the report shall be made within ten (10) days after the injury, or if the incapacity is due to an occupational disease, within ten (10) days after the incapacity comes to the knowledge of the employer.

(c) (1) The director may by rule, regulation, or order provide for additional interim reports, and at the termination of the period of incapacity, regardless of its duration, a supplementary report, in writing, or as otherwise specified by the director.

(2) Blanks to be supplied by the director shall be expanded to include an explanation, at least to the extent possible, of the cause of the injury, and the duplicate copy shall be made available to the department for data collection.

28-32-2. Penalty for failure to report.

(a) Any employer who refuses or neglects to make the reports required by § 28-32-1 may be assessed a penalty of two hundred fifty dollars (\$250) by the director for each refusal or neglect to make a report.

(b) The district court for the county of Providence has jurisdiction to enforce compliance with any order of the director made pursuant to this section. The director, in his or her discretion, may bring a civil action to collect all penalties assessed.

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

28-33-1. Employees entitled to compensation.

If an employee who has not given notice of his or her claim of common law rights of action, or who has given the notice and has waived the common law rights, as provided in § 28-29-19, receives a personal injury arising out of and in the course of his or her employment, connected with and referable to this employment, he or she shall be paid compensation, as subsequently provided, by an employer subject to or who has elected to become subject to chapters 29 - 38 of this title.

28-33-2. Injuries occasioned by willful intent or intoxication.

No compensation is allowed for the injury or death of an employee occasioned by his or her willful intention to bring about the injury or death of himself or herself or another, where it is proved that his or her injury or death was occasioned by that conduct, or that the injury or death resulted from his or her intoxication or unlawful use of controlled substances as defined in chapter 28 of title 21.

28-33-2.1. Injuries occasioned by employer-sponsored, nonwork-related activities.

No compensation shall be allowed for the injury or death of an employee occasioned by or during his or her voluntary participation in employer-sponsored social or nonprofessional athletic activity; provided, that this provision does not bar the right of an employee to recover against an employer for tortious misconduct.

28-33-4. Commencement of compensation.

No indemnity compensation is paid under chapters 29 - 38 of this title for any injury which does not incapacitate the employee for a period of at least three (3) days from earning full wages, but, if the incapacity extends beyond the period of three (3) days, compensation begins on the fourth day from the date of injury, the first two hundred fifty dollars (\$250) of indemnity compensation following the three (3) day period, and the first two hundred fifty dollars (\$250) of medical expense for any compensable injury is, at the discretion of the carrier, a deductible charged to any employer insured in the residual market, which deductible the insurance carrier promptly charges back to the employer. Nonpayment by the employer may be grounds for cancellation of the employer's workers' compensation insurance policy.

28-33-5. Medical services provided by employer.

The employer, subject to the choice of the employee as provided in § 28-33-8, promptly provides for an injured employee any reasonable medical, surgical, dental, optical, or other attendance or treatment, nurse and hospital service, medicines, crutches, and apparatus for the period that is necessary, in order to cure, rehabilitate or relieve the employee from the effects of his or her injury; provided, that no fee for major surgery shall be paid unless permission for it in writing is first obtained from the workers' compensation court, the employer, or the insurance carrier involved, except where

compliance may prove fatal or detrimental to the employee. Irrespective of the date of injury, the liability of the employer for hospital service rendered under this chapter to the injured employee is the cost to the hospital of rendering the service at the time the service is rendered. The director, after consultations with representatives of hospitals, employers, and insurance companies, shall establish administrative procedures regarding the furnishing and filing of data and the time and method of billing and may accept as representing the costs for both routine and special services to patients, costs as computed for the federal medicare program. Each hospital licensed under chapter 16 of title 23 which renders services to injured employees under the Workers' Compensation Act, chapters 29 - 38 of this title, submits and certifies to the director, in accordance with requirements of the administrative procedures established by him or her, its costs for those services. The employer also provides all medical, optical, dental, and surgical appliances and apparatus required to cure or relieve the employee from the effects of the injury, including, but not limited to, the following: ambulance and nursing service, eyeglasses, dentures, braces and supports, artificial limbs, crutches, and other similar appliances; provided, however, that the employer shall not be liable to pay for or provide hearing aids or other amplification devices.

28-33-7. Health service provider reimbursement.

(a) Any dispute as to the reasonableness of the amount of any charge and/or payment for medical, dental, or hospital services or for medicines or appliances is determined by the workers' compensation court after a hearing, and the decision is final; provided, that the director of the department of labor and training, in consultation with the workers' compensation court, and representatives of all appropriate medical disciplines practicing within the state of Rhode Island, shall establish a schedule of rates of reimbursement for those medical and dental services, excluding non physician hospital charges, which are most often provided to employees receiving workers' compensation. The schedule shall be published by the director utilizing the Physician's Current Procedure Terminology (CPT) coding system as published by the American Medical Association. The director updates and revises the schedule as necessary. In setting the rate of reimbursement for any service or procedure, the director determines, based upon available data, the ninetieth (90th) percentile of the usual and customary fee charged by health care providers in the state of Rhode Island and the immediate surrounding area, and in no case may the rate of reimbursement exceed that amount. The liability of the employer or insurer for any charges and/or payment is limited to the rates of reimbursement set forth in this schedule; provided, that petitions may be filed in cases where the reasonableness of a particular rate is questioned, but the court is limited to a determination as to whether the rate, as applied in that particular case, is reasonable. The burden is upon the petitioner seeking payment of the medical bill to establish by a preponderance of the evidence that the rate, as applied, is unreasonable in light of the peculiar nature of the services performed or other circumstances requiring a greater than normal expertise or expenditure of time or effort in providing the service.

(b) Subject to the provisions of subsection (a), disputes other than those covered in § 28-33-9 pertaining to hospitalizations, medical services, appliances, or medicine are heard and determined by the workers' compensation court in accordance with guidelines and protocols established by the medical advisory board.

(c) With respect to all complaints and charges of unprofessional conduct including, but not limited to, unnecessary or inappropriate treatment and any overcharges against any medical care provider brought to the attention of the workers' compensation court in the performance of their duties under this title, the court shall report all complaints and charges to the appropriate board of licensure and discipline.

(d) The chief judge is authorized to establish a health care fee arbitration panel and to establish rules and procedure for the panel to make binding decisions in any dispute as to the value of health care services rendered under this title, and to compensate its members in an amount not to exceed two hundred dollars (\$200) per day. The panel consists of one physician appointed by the president of the Rhode Island Medical Society, one physician who is a member of the Rhode Island Medical Society appointed by the manager of the state workers' compensation insurance fund, and one physician who is a member of the Rhode Island Medical Society appointed by the chief judge of the workers' compensation court.

28-33-8. Employee's choice of physician, dentist, or hospital - Payment of charges - Physician reporting schedule.

(a) (1) An injured employee has freedom of choice to obtain health care, diagnosis, and treatment from any qualified health care provider initially. The initial health care provider of record may, without prior approval, refer the injured employee to any qualified specialist for independent consultation or assessment, or specified treatment. If the insurer or self-insured employer has a preferred provider network approved by the medical advisory board, any change by the employee from the initial health care provider of record may only be to a health care provider listed in the approved preferred provider network. If the employee seeks to change to a health care provider not in the approved preferred provider network, the employee must obtain the approval of the insurer or self-insured employer. Nothing contained in this section shall prevent the treatment, care, or rehabilitation of an employee by more than one physician, dentist, or hospital. The employee's first visit to any facility providing emergency care or to a physician or medical facility under contract with or agreement with the employer or insurer to provide priority care shall not constitute the employee's initial choice to obtain health care, diagnosis, or treatment.

(2) In addition to the treatment of qualified health care providers, the employee has the freedom to obtain a rehabilitation evaluation by a rehabilitation counselor certified by the director pursuant to § 28-33-41 in cases where the employee has received compensation for a period of more than three (3) months, and the employer shall pay the reasonable fees incurred by the rehabilitation counselor for the initial assessment.

(b) Within three (3) days of an initial visit following an injury, the health care provider shall provide to the insurer or self-insured employer, and the employee and his or her attorney, a notification of compensable injury form to be approved by the administrator of the medical advisory board. Within three (3) days of the injured employee's release or discharge, return to work, and/or recovery from an injury covered by chapters 29 - 38 of this title, the health care provider provides a notice of release to the insurer or self-insured employer and the employee and his or her attorney on a form approved by the division. A twenty dollar (\$20.00) fee may be charged by the health care provider to the insurer or self-insured employer for the notification of compensable injury forms or notice of

release forms or for affidavits filed pursuant to subsection (c), but only if filed timely. No claim for care or treatment by a physician, dentist, or hospital chosen by an employee is valid and enforceable against his or her employer, the employer's insurer, or the employee, unless the physician, dentist, or hospital gives written notice of the employee's choice to the employer/insurance carrier within fifteen (15) days after the beginning of the services or treatment. The health care provider shall present, in writing, to the employer or insurance carrier a final itemized bill for all unpaid services or treatment within three (3) months after the conclusion of services or treatment. The employee is not personally liable to pay any physician, dentist, or hospital bills in cases where the physician, dentist, or hospital has forfeited the right to be paid by the employer or insurance carrier because of noncompliance with this section.

(c) (1) Every six (6) weeks, until maximum medical improvement, any qualified physician or other health care professional providing medical care or treatment to any person for an injury covered by chapters 29 - 38 of this title files an itemized bill and an affidavit with the insurer, the employee and his or her attorney, and the medical advisory board. A ten percent (10%) discount may be taken on the itemized bill affidavits not filed timely and received by the insurer one week or more late. The affidavit shall be on a form designed and provided by the administrator of the medical advisory board and shall state:

(i) The nature of the injury being treated;

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

(iii) Anticipated further treatment including type, frequency, and duration of treatment(s), whether or not maximum medical improvement has been reached or when it is expected to be reached, and the anticipated date of discharge;

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

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

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

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

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

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

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

(f) (1) Compensation for medical expenses and other services under § 28-33-5, 28-33-7 or 28-33-8 is due and payable within twenty-one (21) days from the date a request is made for payment of these expenses by the provider of the medical services. In the event

payment is not made within twenty-one (21) days from the date a request is made for payment, the provider of medical services may add, and the insurer or self-insurer shall pay, interest at the per annum rate as provided in § 9-21-10 on the amount due. The employee or the medical provider may file a petition with the administrator of the workers' compensation court, which petition shall follow the procedure as authorized in chapter 35 of this title.

(2) The twenty-one (21) day period in subsection (f)(1) begins on the date the insurer receives a request with appropriate documentation required to determine whether the claim is compensable and the payment requested is due.

28-33-12. Death benefits payable to dependents.

(a) (1) If death results from the injury, the employer shall pay the dependents of the employee wholly dependent upon his or her earnings for support at the time of his or her injury or death, whichever is the greater in number, a weekly payment equal to the rate that would have been payable for total incapacity to the deceased employee under § 28-33-17, except as subsequently provided, in case the dependent is the surviving spouse or child under the age of eighteen (18) of that employee.

(2) If the dependent is a surviving spouse, or surviving spouse upon whom one or more children of the deceased employee is dependent, including an adopted child or stepchild under the age of eighteen (18) years or over that age but physically or mentally incapacitated from earning, the employer shall pay the surviving spouse the weekly rate for total incapacity the deceased employee would have been entitled to receive under § 28-33-17 plus forty dollars (\$40.00) per week for each dependent child.

(3) The word "child" within the meaning of this section also includes any child of the injured employee conceived but not born at the time of the employee's injury, and the compensation provided for in this chapter is payable on account of any child from the date of its birth.

(b) Upon the remarriage or death of the surviving spouse, or, if there is no surviving spouse, upon the death of the injured employee, the compensation payable under this chapter is thereafter paid to those dependent child or children of the injured employee, and in case there is more than one child the compensation is divided equally among them and the compensation shall be not more than the weekly rate for total incapacity due the injured employee under § 28-33-17 for the dependent child plus forty dollars (\$40.00) for each additional dependent child.

(c) If the employee leaves dependents only partly dependent upon his or her earnings for support at the time of his or her injury or death, the employer pays that dependent from the date of the injury or death, whichever is greater in number, a weekly compensation equal to the amount of the average weekly contribution by the employee to the partial dependents, not exceeding the weekly payments provided in this chapter for the benefit of persons wholly dependent.

(d) When weekly payments have been made to an injured employee before his or her death, the compensation to dependents begins from the date of the last of those payments; and provided, that if the deceased leaves no dependents at the time of the injury or death, the employer is not liable to pay compensation under chapters 29 - 38 of this title except as specifically provided in § 28-33-16.

(e) Except in the case of a dependent child physically or mentally incapacitated from earning, dependency benefits for each child shall terminate when that dependent child attains his or her eighteenth (18th) birthday; provided, that the payment of dependency benefits to a dependent child over the age of eighteen (18) years continue as long as that child is satisfactorily enrolled as a full-time student in an educational institution or an educational facility accredited or approved by the appropriate state educational authorities at the time of enrollment. Those payments will not be continued beyond the age of twenty-three (23) years.

(f) When a surviving spouse without dependent children remarries, benefits payable under this section cease on the date of the remarriage.

(g) A surviving spouse entitled to benefits under this section shall receive an annual cost of living increase of four percent (4%) on every anniversary of the date of death for as long as he or she is eligible for benefits under this section.

28-33-16 Burial expenses.

If the employee dies as a result of the injury, the employer shall pay in addition to any compensation provided for in this chapter, the sum of fifteen thousand dollars (\$15,000). This sum shall be paid under the provisions of § 28-33-23.

28-33-17. Weekly compensation for total incapacity - Permanent total disability - Dependents' allowances.

(a) (1) While the incapacity for work resulting from the injury is total, the employer pays the injured employee a weekly compensation equal to seventy-five percent (75%) of his or her average weekly spendable base wages, earnings, or salary, as computed pursuant to the provisions of § 28-33-20; but not more than sixty percent (60%) of the state average weekly wage of individuals in covered employment under the provisions of the Rhode Island Employment Security Act as computed and established by the Rhode Island department of labor and training, annually, on or before May 31 of each year, under the provisions of § 28-44-6(a); provided, that effective September 1, 1974, the maximum rate for weekly compensation for total disability shall not exceed sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the state average weekly wage as computed and established under the provisions of § 28-44-6(a); and provided, further, that effective September 1, 1975, the maximum rate for weekly compensation for total disability shall not exceed one hundred percent (100%) of the state average weekly wage as computed and established under § 28-44-6(a); and provided further that effective September 1, 2000, the maximum rate for weekly compensation for total disability shall not exceed one hundred ten percent (110%) of the state average weekly wage as computed and established under the provisions of section 28-44-6(a); and, also, if the maximum weekly benefit rate is not an exact multiple of one dollar (\$1.00), then the rate is raised to the next higher multiple of one dollar (\$1.00).

(2) The average weekly wage computed and established under § 28-44-6(a) is applicable to injured employees whose injury occurred on or after September 1, 2000, and shall be applicable for the full period during which compensation is payable.

(3) (i) Spendable earnings are the employee's gross average weekly wages, earnings, or salary, including any gratuities reported as income, reduced by an amount determined to reflect amounts which would be withheld from the wages, earnings, or salary under

federal and state income tax laws, and under the Federal Insurance Contributions Act (FICA), 26 U.S.C. § 3101 et seq., relating to social security and Medicare taxes. In all cases, it is to be assumed that the amount withheld would be determined on the basis of expected liability of the employee for tax for the taxable year in which the payments are made without regard to any itemized deductions but taking into account the maximum number of personal exemptions allowable.

(ii) Each November 1 and March 1, the director shall publish tables of the average weekly wage and seventy-five percent (75%) of spendable earnings that are to be in effect on the following January 1. These tables are conclusive for the purposes of converting an average weekly wage into seventy-five percent (75%) of spendable earnings. In calculating spendable earnings the director has discretion to exempt funds assigned to third parties by order of the family court pursuant to § 8-10-3 and funds designated for payment of liens pursuant to § 28-33-27 upon submission of supporting evidence.

(b) (1) In the following cases, it is, for the purpose of this section, conclusively presumed that the injury resulted in permanent total disability:

(i) The total and irrecoverable loss of sight in both eyes or the reduction to one-tenth (1/10) or less of normal vision with glasses;

(ii) The loss of both feet at or above the ankle;

(iii) The loss of both hands at or above the wrist;

(iv) The loss of one hand and one foot;

(v) An injury to the spine resulting in permanent and complete paralysis of the legs or arms; and

(vi) An injury to the skull resulting in incurable imbecility or insanity.

(2) In all other cases, total disability is determined only if, as a result of the injury, the employee is physically unable to earn any wages in any employment; provided, that in cases where manifest injustice would result, total disability is determined when an employee proves, taking into account the employee's age, education, background, abilities, and training, that he or she is unable on account of his or her compensable injury to perform his or her regular job and is unable to perform any alternative employment. The court may deny total disability under this subsection without requiring the employer to identify particular alternative employment.

(c) (1) Where the employee has persons conclusively presumed to be dependent upon him or her or in fact dependent, the sum of fifteen dollars (\$15.00) shall be added to the weekly compensation payable for total incapacity for each person wholly dependent on the employee, except that the sum of forty dollars (\$40.00) is added for those receiving benefits under § 28-33-12, but in no case shall the aggregate of those amounts exceed eighty percent (80%) of the average weekly wage of the employee, except that there is no limit for those receiving benefits under § 28-33-12.

(2) The dependency allowance is in addition to the compensation benefits for total disability otherwise payable under the provisions of this section. The dependency allowance is increased if the number of persons dependent upon the employee increases during the time that weekly compensation benefits are being received.

(3) For the purposes of this section the following persons are conclusively presumed to be wholly dependent for support upon an employee:

- (i) A wife upon a husband with whom she is living at the time of his injury, but only while she is not working for wages during her spouse's total disability;
- (ii) A husband upon a wife with whom he is living at the time of her injury, but only while he is not working for wages during his spouse's total disability; and
- (iii) Children under the age of eighteen (18) years, or over that age but physically or mentally incapacitated from earning, if living with the employee, or, if the employee is bound or ordered by law, decree, or order of court, or by any other lawful requirement, to support the children, although living apart from them; provided, that the payment of dependency benefits to a dependent child over the age of eighteen (18) years shall continue as long as that child is satisfactorily enrolled as a full-time student in an educational institution or an educational facility accredited or approved by the appropriate state educational authorities at the time of enrollment. Those payments shall not be continued beyond the age of twenty-three (23) years. Children, within the meaning of this paragraph, also includes any children of the injured employee conceived but not born at the time of the employee's injury, and the compensation provided for in this section is payable on account of these children from the date of their birth.
- (d) "Dependents" as provided in this section does not include the spouse of the injured employee except as provided in subdivisions (c)(3)(i) and (ii). In all other cases questions of dependency are determined in accordance with the facts as the facts may be at the time of the injury.
- (e) The court or any judge of the court may in its or his or her discretion order the insurer or self-insurer to make payment of the nine dollars (\$9.00) or fifteen dollars (\$15.00) for those receiving benefits under § 28-33-12 directly to the dependent.
- (f) (1) Where any employee's incapacity is total and has extended beyond fifty-two (52) weeks, regardless of the date of injury, payments made to all totally incapacitated employees shall be increased as of May 10, 1991, and annually on the tenth of May thereafter as long as the employee remains totally incapacitated. The increase shall be by an amount equal to the total percentage increase in 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) If the employee thereafter is found to be only partially incapacitated, the weekly compensation benefit paid to the employee shall be equal to the payment in effect prior to his or her most recent cost of living adjustment.
 - (3) The word "index" as used in this section refers to the consumer price index, United States city average for urban wage earners, clerical workers, as that index is formulated and computed by the bureau of labor statistics of the United States department of labor.
 - (4) The May 10, 1991, increase is based upon the total percentage increase, if any, in the annual consumer price index for the period of March 1, 1990 to February 28, 1991. Thereafter, increases are made on May 10 annually, based upon the percentage increase, if any, in the index for the period March 1 to February 28.
 - (5) The preceding computations are made by the director of labor and training and promulgated to insurers and employers making payments required by this section. Increases are paid by insurers and employers without further order of the court. If payment payable under this section is not paid within fourteen (14) days after the employer or insurer has been notified or it becomes due, whichever is later, there is added

to the unpaid payment an amount equal to twenty percent (20%) of the payment, which shall be paid at the same time as, but in addition to the payment.

(6) This section applies only to payment of weekly indemnity benefits to employees as described in subsection (f)(1), 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.

28-33-17.2. Employee's affirmative duty to report earnings - Penalties for failure to provide earnings report - Civil and criminal liability.

(a) It is the intent of the legislature that the costs resulting from fraud and abuse in the workers' compensation system be arrested. In order to discourage potential abusers, employees must be aware of the affirmative duty to report earnings and the penalties for any fraud or abuse must be severe and certain.

(b) Any employee entitled to receive weekly workers' compensation benefits has an affirmative duty to report those earnings, including wages or salary remuneration paid for personal services, commissions, and bonuses, including the cash value of all remuneration payable in any medium other than cash, earned from self-employment or from any employer other than the employer in whose employ he or she was injured, so that compensation benefits may be properly computed.

(c) (1) The department of labor and training, employer, or insurer shall notify any employee receiving weekly workers' compensation benefits, on forms prescribed by the department, of that employee's affirmative duty to report earnings and shall specifically notify the employee that a failure to report earnings may subject him or her to civil or criminal liability.

(2) The notice by the employer or insurer may be satisfied by printing the notice on the employee payee statement (check stub) portion of indemnity checks sent to the employee.

(d) Any employee entitled to weekly workers' compensation benefits for any period of time, shall, upon written request of the employer or insurer, provide at reasonable intervals to the employer or insurer an earnings report, on forms prescribed by the department, advising the employer or insurer of the exact amount of earnings for each week of his or her entitlement to benefits or advising that no earnings were received for particular weeks, so that the employer or insurer may properly compute the amount of benefits due to the employee.

(e) If any employee refuses to submit an earnings report upon request by the employer or insurer his or her rights to compensation may be suspended and his or her compensation during that period of suspension may be forfeited.

(f) Where any employee is found to be entitled to benefits in excess of fifty-two (52) weeks pursuant to a decision resulting in the entry of an order or decree, he or she shall submit an earnings report as described in subsection (d). In these cases, the employer or insurer must pay benefits within seven (7) days of receipt of the earnings report; provided, that no petition to enforce is allowed nor any penalty for late payment awarded unless payments were not made within seven (7) days after the earnings report has been provided.

(g) The employer or insurer is entitled to recover overpayments made to any employee as a result of a violation of the employee's duty to report earnings by any of the following means:

- (1) Upon petition and order of the workers' compensation court to suspend the employer's obligation to pay weekly benefits; or
- (2) By civil action in the district or superior court. Costs and counsel fees for the action may be awarded to the employer or insurer.
- (h) Any employee who by any fraudulent means obtains or attempts to obtain workers' compensation benefits, whether by failure to report earnings, falsification of the earnings report document, or intentional misrepresentation, may forfeit the right to any future weekly workers' compensation benefits as determined by the workers' compensation court.
- (i) Any employee who by any fraudulent means obtains or attempts to obtain workers' compensation benefits to which he or she was not entitled, whether by failure to report earnings, falsification of the earnings report, or intentional misrepresentation, is deemed guilty of larceny pursuant to § 11-41-4 or other pertinent criminal statutes of the state of Rhode Island. Each occurrence constitutes a separate and distinct offense.
- (j) The administrator of the workers' compensation court, any workers' compensation judge, or any representative of an employer may be the party complainant to any complaint and warrant brought to invoke the criminal penalties provided for in this section, and the party complainant is, except for the representative of the employer, exempt from giving surety for costs in the action.
- (k) All criminal actions for any violation of this section are prosecuted by the attorney general.
- (l) Where any employer or insurer intentionally and unreasonably utilizes the earnings report required by subsection (d) in order to harass an employee or delay payment of benefits to an employee, a penalty of twenty percent (20%) shall be added to all amounts of weekly compensation benefits due and owing.

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 § 28-38-20, and his or her spendable weekly wages, earnings, salary, or earnings capacity thereafter, but not more than the maximum weekly compensation rate for total incapacity as set forth in § 28-33-17. The provisions of this section are subject to § 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). 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 § 28-33-18.2.
- (c) (1) Earnings capacity determined from degree of functional impairment pursuant to § 28-29-2(3) are determined as a percentage of the whole person based on the most recent edition of the American Medical Association Guides To The Value Of Permanent

Impairment. Earnings capacity is calculated from the percentage of impairment as follows:

(i) For impairment of five percent (5%) or less, earnings capacity is 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 is 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 is calculated so as to extinguish one hundred percent (100%) less one point two five (1.25) times the percent of impairment of weekly benefits; and

(iv) For impairment of sixty-five percent (65%) or less, but greater than fifty percent (50%), earnings capacity is 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 is applicable only when the employee's condition has reached maximum medical improvement under § 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 are determined pursuant to the terms of § 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 § 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.

28-33-19. Additional compensation for specific injuries.

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

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

- (ii) For the loss by severance of either arm at or above the elbow, or of either leg at or above the knee, for a period of three hundred twelve (312) weeks;
- (iii) For the loss by severance of either hand at or above the wrist for a period of two hundred forty-four (244) weeks;
- (iv) For the entire and irrecoverable loss of sight of either eye, or the reduction to one-tenth (1/10) or less of normal vision with glasses, or for loss of binocular vision for a period of one hundred sixty (160) weeks;
- (v) For the loss by severance of either foot at or above the ankle, for a period of two hundred five (205) weeks;
- (vi) For the loss by severance of the entire distal phalange of either thumb for a period of thirty-five (35) weeks; and for the loss by severance at or above the second joint of either thumb, for a period of seventy-five (75) weeks;
- (vii) For the loss by severance of one phalange of either index finger, for a period of twenty-five (25) weeks; for the loss by severance of at least two (2) phalanges of either index finger, for a period of thirty-two (32) weeks; for the loss by severance of at least three (3) phalanges of either index finger, for a period of forty-six (46) weeks;
- (viii) For the loss by severance of one phalange of the second finger of either hand, for a period of sixteen (16) weeks; for the loss by severance of two (2) phalanges of the second finger of either hand, for a period of twenty-two (22) weeks; for the loss by severance of three (3) phalanges of the second finger on either hand, for a period of thirty (30) weeks;
- (ix) For the loss by severance of one phalange of the third finger of either hand, for a period of twelve (12) weeks; for the loss by severance of two (2) phalanges of the third finger of either hand, for a period of eighteen (18) weeks; for the loss by severance of three (3) phalanges of a third finger of either hand, for a period of twenty-five (25) weeks;
- (x) For the loss by severance of one phalange of the fourth finger of either hand, for a period of ten (10) weeks; for the loss by severance of two (2) phalanges of the fourth finger of either hand, for a period of fourteen (14) weeks; for the loss by severance of three (3) phalanges of a fourth finger of either hand, for a period of twenty (20) weeks;
- (xi) For the loss by severance of one phalange of the big toe on either foot, for a period of twenty (20) weeks; for the loss by severance of two (2) phalanges of the big toe of either foot, for a period of thirty-eight (38) weeks; for the loss by severance at or above the distal joint of any other toe than the big toe, for a period of ten (10) weeks for each toe; and
- (xii) For the complete loss of hearing of either ear sixty (60) weeks; for the complete loss of hearing of both ears two hundred (200) weeks; provided, that the loss is due to external trauma.

(2) Where any bodily member or portion of it has been rendered permanently stiff or useless, compensation in accordance with the schedule contained in this section is paid as if the member or portion of the member had been severed completely; provided, that if the stiffness or uselessness is less than total, compensation is paid for that period of weeks in proportion to the period applicable in the event that the member or portion of a member has been severed completely as the instant percentage of stiffness or uselessness bears to the total stiffness or total uselessness of the bodily members or portion of the bodily member.

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

(ii) For partial loss by severance for any of the injuries specified in subdivisions (a)(1)(i) - (a)(1)(xii), proportionate benefits are paid for the period of time that the partial loss by severance bears to the total loss by severance; and (ii) For permanent disfigurement of the body the number of weeks may not exceed five hundred (500) weeks; this sum is payable in a one time payment within fourteen (14) days of the entry of a decree, order, or agreement of the parties in addition to all other sums under this section wherever it is applicable.

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

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

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

(iv) There shall be payable as permanent partial disability for total occupational deafness of one ear, seventy-five (75) weeks of compensation; for total occupational deafness of both ears, two hundred forty-four (244) weeks of compensation; for partial occupational deafness in one or both ears, compensation shall be paid for such periods as are proportionate to the relation which the hearing loss bears to the amount provided in this subdivision for total loss of hearing in one or both ears, as the case may be. Acuity hearing loss related to a single event, usually trauma (e.g., in association with a basal skull fracture), or by other mechanism shall be paid pursuant to this section.

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

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

(viii) If previous hearing loss, whether occupational or not, is established by an audiometric examination or other competent evidence, whether or not the employee was exposed to assessable noise exposure within one year preceding the test, the employer is not liable for the previous loss, nor is the employer liable for a loss for which

compensation has previously been paid or awarded. The employer is liable only for the difference between the percent of occupational hearing loss determined as of the date of the audiometric examination conducted by a certified audiometric technician using an audiometer which meets the specifications established by the American National Standards Institute (ANSI 3.6-1969, ri973) used to determine occupational hearing loss and the percentage of loss established by the baseline audiometric examination. An amount paid to an employee for occupational hearing loss by any other employer shall be credited against compensation payable by the subject employer for the hearing loss. The employee shall not receive in the aggregate greater compensation from all employers for occupational hearing loss than that provided in this section for total occupational hearing loss. A payment shall not be paid to an employee unless the employee has worked in excessive noise exposure employment for a total period of at least one hundred eighty (180) days for the employer for whom compensation is claimed.

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

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

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

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

28-33-20. Computation of earnings.

(a) For the purposes of this chapter, the average weekly wage is ascertained as follows:

(1) For full-time or regular employees, by dividing the gross wages, inclusive of overtime pay, provided, that bonuses and overtime is averaged over the length of employment but not in excess of the preceding fifty-two (52) week period, earned by the injured worker in employment by the employer in whose service he or she is injured during the thirteen (13) calendar weeks immediately preceding the week in which he or she was injured, by the number of calendar weeks during which, or any portion of which, the worker was actually employed by that employer, including any paid vacation time; but, in making this computation, absence for seven (7) consecutive calendar days, although not in the same calendar week, is considered as absence for a calendar week. When the employment commenced other than the beginning of a calendar week, the calendar week and wages earned during that week are excluded in making this computation. When the

employment previous to injury as provided in this section is computed to be less than a net period of two (2) calendar weeks, his or her weekly wage is considered to be equivalent to the average weekly wage prevailing in the same or similar employment at the time of injury except that, when an employer has agreed to pay a certain hourly wage to the worker, the hourly wage agreed upon is the hourly wage for the injured worker and his or her average weekly wage is computed by multiplying that hourly wage by the number of weekly hours scheduled for full-time work by full-time employees regularly employed by the employer. Where the injured employee has worked for more than one employer during the thirteen (13) weeks immediately preceding his or her injury, his or her average weekly wages are calculated upon the basis of wages earned from all those employers in the period involved by totaling the gross earnings from all the employers and dividing by the number of weeks in which he or she was actually employed by any employer, in the same manner as if the employee had worked for a single employer and, except in the case of apportionment of liability among successive employers as provided in § 28-34-8, the employer in whose employ the injury was sustained is liable for all benefits provided by chapters 29 - 38 of this title. A schedule of the computation of the average weekly wage in compliance with this section is a necessary part of the memorandum of agreement required by § 28-35-1. Where the employer has been accustomed to paying the employee a sum to cover any special expense incurred by the employee by the nature of his or her employment, the sum paid is not counted as part of the employee's wages, earnings, or salary. The fact that an employee has suffered a previous injury or received compensation for an injury does not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, his or her average weekly wages is a sum that will reasonably represent his or her weekly earning capacity at the time of the later injury, in the employment in which he or she was working at that time, and shall be arrived at according to, and subject to the limitations of, the provisions of this section; provided, that in computing the average weekly wages earned subsequent to the first injury, the time worked and wages earned prior to that injury are excluded.

(2) In occupations that are seasonal, the average weekly wage is taken to be one-fifty second ($1/52$) of the total wages which the employee has earned during the twelve (12) calendar months immediately preceding the injury.

(3) Wages of an employee working part-time are taken to be the gross wages earned during the number of weeks so employed, or of weeks in which the employee worked, up to a maximum of twenty-six (26) calendar weeks immediately preceding the date of injury, divided by the number of weeks employed, or by twenty-six (26), as the case may be. "Part-time" means working by custom and practice under the verbal or written employment contract in force at the time of the injury, where the employee agrees to work or is expected to work on a regular basis less than twenty (20) hours per week. Wages are calculated as follows:

(i) For part-time employees, by dividing the gross wages, inclusive of overtime pay, provided, any bonuses and overtime shall be averaged over the length of employment but not in excess of the preceding fifty-two (52) week period, earned by the injured worker in employment by the employer in whose service he or she is injured during the twenty-six (26) consecutive calendar weeks immediately preceding the week in which he or she was injured, by the number of calendar weeks during which, or any portion of which, the

worker was actually employed by that employer, including any paid vacation time; but, in making this computation, absence for seven (7) consecutive calendar days, although not in the same calendar week, is considered as absence for a calendar week. When the employment commenced otherwise than the beginning of a calendar week, the calendar week and wages earned during that week are excluded in making the preceding computation. When the employment previous to injury as provided in this section is computed to be less than a net period of two (2) weeks, the weekly wage is considered to be equivalent to the average weekly wage prevailing in the same or similar employment at the time of injury except that when an employer has agreed to pay a certain hourly wage to the worker, the hourly wage agreed upon is the hourly wage for the injured worker, and his or her average weekly wage is computed by multiplying that hourly wage by the number of weekly hours agreed upon in the contract of hire;

(ii) In the event the injured employee had concurrent employment with one or more additional employers at the time of injury, the average weekly wage is calculated for the twenty-six (26) calendar weeks preceding the week in which the employee was injured upon the basis of wages earned from all those employers in the period involved by totaling the gross earnings from all the employers and dividing by the number of usable weeks the employee actually was employed by that employer, in the same manner as if the employee had worked for a single employer; provided, in the case of apportionment of liability among successive employers pursuant to § 28-34-8, the employer in whose employ the injury was sustained is liable for all benefits provided by chapters 29 - 38 of this title. In the case that the injured employee's other employer is a full-time employer, the average weekly wage is calculated according to subdivision (1) for the thirteen (13) calendar weeks immediately preceding the week in which he or she was injured. Calculations for part-time employment are calculated separately for the twenty-six (26) calendar weeks immediately preceding the week of injury. A schedule of computation of the average weekly wage in compliance with this section is a necessary part of the memorandum of agreement required by § 28-35-1; and

(iii) Where the employer is accustomed to paying the employee a sum to cover any special expense incurred by the employee by the nature of the employment, the sum paid is not reckoned as part of the employee's wages, earnings, or salary. The fact that an employee has suffered a previous injury or received compensation for a previous injury does not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, the average weekly wage is a sum that will reasonably represent the employee's earning capacity at the time of the later injury, in the employment in which he or she was working at that time, and is derived according to, and subject to, the limitations of the provisions of this section; provided, that in computing the average weekly wages earned subsequent to the first injury, the time worked and wages earned prior to that injury are excluded.

28-33-20.1. Computation of earnings for recurrence - Burden of employee to establish recurrence.

(a) In the event a person collecting benefits under this chapter, regardless of the date of injury, has returned to employment for a period of twenty-six (26) weeks or more and suffers a recurrence of the injury which precipitated the person collecting benefits under this chapter, the average weekly wage is ascertained by dividing the gross wages earned

by the injured worker in employment by the employer in whose service he or she is injured during the thirteen (13) calendar weeks immediately preceding the week in which he or she suffered the recurrence, by the number of calendar weeks during which, or any portion of which, the worker was actually employed by that employer; but, in making this computation, absence for seven (7) consecutive calendar days, although not in the same calendar week, is considered as absence for a calendar week.

(b) For all petitions filed, to prove recurrence of incapacity to work, regardless of the date of injury, the employee must document that the incapacity has increased or returned without the need for the employee to document a comparative change of condition.

28-33-41. Rehabilitation of injured persons.

(a) (1) The department and the workers' compensation court shall expedite the rehabilitation of and the return to remunerative employment of all employees who are disabled and injured and who are subject to chapters 29 - 38 of this title.

(2) "Rehabilitation" means the prompt provision of appropriate services necessary to restore an employee who is occupationally injured or diseased to his or her optimum physical, mental, vocational, and economic usefulness. This may require medical, vocational, and/or reemployment services to restore an employee who is occupationally disabled as nearly as possible to his or her pre-injury status. As a procedure, rehabilitation may include three (3) overlapping and interrelated components:

(i) (A) Medical treatment and related services. Medical treatment and related services needed to restore the employee who is occupationally disabled to a state of health as near as possible to that which existed prior to the occupational injury or disease. These services may include, but are not limited to, the following: medical, surgical, hospital, nursing services, attendant care, chiropractic care, physical therapy, occupational therapy, medicines, prostheses, orthoses, other physical rehabilitation services, including psychosocial services, and reasonable travel expenses incurred in procuring the services.

(B) Treatment by spiritual means. (I) Nothing in this chapter shall be construed to require an employee who in good faith relies on or is treated by prayer or spiritual means by an accredited practitioner of a well recognized church to undergo any medical or surgical treatment, and weekly compensation benefits may not be suspended or terminated on the grounds that the employee refuses to accept recommended medical or surgical benefits. The employee shall submit to all physical examinations as required by chapters 29 - 38 of this title.

(II) However, a private employer, insurer, self-insurer or group self-insurer may pay or reimburse an employee for any costs associated with treatment by prayer or spiritual means.

(ii) Vocational restorative services. Vocational services needed to return the employee with a disability to his or her pre-injury employment or, if that is not possible, to a state of employability in suitable alternative employment. These services may include, but are not limited to, the following: psychological and vocational evaluations, counseling, and training.

(iii) Reemployment services. Services used to return the employee who is occupationally disabled to suitable, remunerative employment as adjudged by his or her functional and vocational ability at that time.

(b) (1) Any employer or any injured employee with total disability or permanent partial disability to whom the insurance carrier or certificated employer has paid compensation for a period of three (3) months or more, and to whom compensation is still being paid, or his or her employer or insurer may file a petition with the workers' compensation court requesting approval of a rehabilitation program or may mutually agree to a rehabilitation program. Determinations shall be rendered by the workers' compensation court in accordance with this section and as provided in chapters 29 - 38 of this title and the rules of practice of the workers' compensation court.

(2) Action shall be taken that, in the judgment of the workers' compensation court, seems practicable and likely to speed the recovery and rehabilitation of injured workers; provided, that rehabilitative services are appropriate to the needs and capabilities of injured workers.

(c) Compensation payments shall not be diminished or terminated while the employee is participating in a rehabilitation program approved by the workers' compensation court or agreed to by the parties. Compensation payments shall not be diminished or terminated while the employee is participating in a rehabilitation program approved by the workers' compensation court or agreed to by the parties. Provided, however, that compensation payments shall be suspended while an injured employee willfully refuses to participate in a rehabilitation program approved by the workers' compensation court or agreed to by the parties. When the employee has completed an approved rehabilitation program, the rehabilitation provider shall recommend, in the instance of vocational rehabilitation, an earnings capacity, or in the instance of physical rehabilitation provided or prescribed by a physician, a degree of functional impairment, and the employee shall be referred to the court for an earnings capacity adjustment to benefits, unless the employee has returned to gainful employment.

(d) The employer shall bear the expense of rehabilitative services agreed to or ordered pursuant to this section. If those rehabilitative services require residence at or near or travel to a rehabilitative facility, the employer shall pay the employee's reasonable expense for board, lodging, and/or travel.

(e) Except for this section, § 28-33-8 remain in full force and effect.

(f) For the purposes of this section, the director shall promulgate rules and regulations pursuant to chapter 35 of title 42 for certifying rehabilitation providers, evaluators, and counselors, and the director shall maintain a registry of those persons so certified. No plan of rehabilitation requiring the services of a rehabilitation counselor shall be approved by the workers' compensation court or agreed to by the parties unless the counselor is certified by the director. Any requests for approval of a rehabilitation plan pending before the director prior to September 1, 2000, will remain at the department for determination. All requests after this date will be heard by the workers' compensation court.

28-33-47. Reinstatement of injured worker.

(a) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for reinstatement, if the position exists and is available and the worker is not disabled from performing the duties of the position with reasonable accommodation made by the employer in the manner in which the work is to be performed. A workers' former position is "available"

even if that position has been filled by a replacement while the injured worker was absent as a result of the worker's compensable injury. If the former position is not available, the worker shall be reinstated in any other existing position which is vacant and suitable. A certificate by the treating physician that the physician approves the worker's return to the worker's regular employment or other suitable employment is prima facie evidence that the worker is able to perform the duties.

(b) The right of reinstatement is subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees, and nothing exempts any employer from or excuse full compliance with any applicable provisions of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and chapter 87 of title 42.

(c) Notwithstanding subsection (a) of this section:

(1) The right to reinstatement to the worker's former position under this section terminates upon any of the following:

(i) A medical determination by the treating physician, impartial medical examiner, or comprehensive independent health care review team that the worker cannot, at maximum medical improvement, return to the former position of employment or any other existing position with the same employer that is vacant and suitable;

(ii) The approval by the workers' compensation court of a vocational rehabilitation program for the worker to train the worker for alternative employment with another employer;

(iii) The worker's acceptance of suitable employment with another employer after reaching maximum medical improvement;

(iv) The worker's refusal of a bona fide offer from the employer of light duty employment or suitable alternative employment, prior to reaching maximum medical improvement;

(v) The expiration of ten (10) days from the date that the worker is notified by the insurer or self-insured employer by mail at the address to which the weekly compensation benefits are mailed that the worker's treating physician has released the worker for employment unless the worker requests reinstatement within that time period;

(vi) The expiration of thirty (30) days after the employee reaches maximum medical improvement or concludes or ceases to participate in an approved program of rehabilitation, or one year from the date of injury, whichever is sooner. Notwithstanding the foregoing, where the employee is participating in an approved program of rehabilitation specifically designed to provide the employee with the ability to perform a job for which he or she would be eligible under subsection (a) of this section, the right of reinstatement shall terminate when the employee concludes or ceases to participate in the program or eighteen (18) months from the date of injury, whichever is sooner;

(vii) Except where otherwise provided under a collective bargaining agreement, the approval by the court of a settlement pursuant to chapters 29 - 38 of this title.

(2) The right to reinstatement under this section does not apply to:

(i) A worker hired on a temporary basis;

(ii) A worker employed in a seasonal occupation;

(iii) A worker who works out of a hiring hall operating pursuant to a collective bargaining agreement;

(iv) A worker whose employer employs nine (9) or fewer workers at the time of the worker's injury;

- (v) A worker who is on a probationary period of less than ninety-one (91) days.
- (d) (1) Any violation of this section is an unlawful employment practice. If the employee applies for reinstatement under this section and the employer in violation of this section refuses to reinstate the employee, the workers' compensation court is authorized to order reinstatement and award back pay and the cost of fringe benefits lost during the period as appropriate.
- (2) Determinations of reinstatement disputes shall be rendered by the workers' compensation court in accordance with this section and chapters 29 - 38 of this title, and the rules of practice of the workers' compensation court.
- (e) When an employee is entitled to reinstatement under this section, but the position to which reinstatement is sought does not exist or is not available, the employee may file for unemployment benefits as if then laid off from that employment, and unemployment benefits shall be calculated pursuant to chapter 44 of this title; provided, that an employee cannot collect both workers' compensation indemnity benefits and unemployment benefits under this section.
- (f) The education division of the department of labor and training shall provide information concerning this section to employees who receive benefits under this title.
- (g) Any requests for reinstatement determinations pending before the director prior to September 1, 2000, will remain at the department for resolution. Any requests after this date will be heard by the workers' compensation court.

28-34-1. Definitions.

Whenever used in this chapter:

- (1) "Disability" means the state of being disabled from earning full wages at the work at which the employee was last employed;
- (2) "Disablement" means the event of becoming so disabled as defined in subdivision (1);
- (3) "Occupational disease" means a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment.

28-35-1. Filing of memorandum of agreement.

- (a) If the employer makes payments of compensation to an employee or those entitled to compensation on account of the death of an employee under chapters 29 - 38 of this title, a memorandum of that agreement signed by the employer or the employer's insurer is filed with the department which immediately docket it in a book kept for that purpose.
- (b) The memorandum shall include:
 - (1) The names of the employee, employer, and insurance carrier;
 - (2) The date, place, nature, and location of the injury on the employee's body;
 - (3) The names of the employee's other employers, if any, or a statement that there is no multiple employment, if that is the case;
 - (4) The rate upon which the compensation is based;
 - (5) Any other information required by the director; and
 - (6) The average weekly straight time earnings earned by the employee for the thirteen (13) weeks prior to injury and the amount of overtime pay included in calculating the employee's average weekly wage.

(c) The employer shall send a copy of the memorandum and any amendments to it to the employee and his or her attorney or the representative of the decedent and its attorney either with the payment of compensation made under § 28-35-40 or by certified mail, return receipt requested, at the same time as it is filed with the department.

(d) The employer shall file a memorandum pursuant to this section within ten (10) days of the initial payment by the employer or insurer.

(e) Upon the filing of the memorandum of agreement with the department, the memorandum is as binding upon the party filing the memorandum as a preliminary determination, order, or decree.

28-35-8. Filing of nonprejudicial memorandum of agreement.

(a) Notwithstanding § 28-35-1, if the employer files a memorandum of agreement but specifically designates that agreement as a "non-prejudicial" or "without prejudice", the employer may pay weekly compensation benefits not exceeding thirteen (13) weeks. In these cases, the employer shall send a copy of the non-prejudicial memorandum and any amendments to it to the employee and his or her attorney or the representative of the decedent and his or her attorney by certified mail, return receipt requested, at the same time as it is filed with the department in the same manner as if it were a memorandum of agreement. The non-prejudicial memorandum of agreement contains all information as directed by § 28-35-1. Having done so, the non-prejudicial memorandum of agreement and any action taken pursuant to it shall be without prejudice to any party thereafter maintaining any position as to employer liability for payments under chapters 29 - 38 of this title, maintainable in the absence of an agreement. If at any time within or at the close of the thirteen-week period after payments of compensation have commenced, the employer or insurer terminates weekly payments to the employee or to those entitled to payments on account of death of an employee, the employer or insurer shall notify the employee and his or her attorney or the representative of the decedent employee and his or her attorney within ten (10) days on a form prescribed by the department that:

(1) Payments have terminated;

(2) The claim has not been formally accepted; and

(3) The employee has the right to file a petition, within the two (2) year limitation as set forth in § 28-35-57, to formally establish liability of the employer or insurer.

(b) If the employer or insurer makes payments of weekly benefits to the employee or to those entitled to payments on account of death of an employee for more than the thirteen-week period, the payments constitute a conclusive admission of liability and ongoing incapacity as to the injuries set forth in the non-prejudicial memorandum of agreement. The employer or insurer shall, within ten (10) days of making additional payments, file a memorandum of agreement pursuant to § 28-35-1.

28-35-20. Informal pretrial conference.

(a) Before any case proceeds to a trial, the judge shall conduct a mandatory pretrial conference within twenty-one (21) days of the date of filing with a view to expediting the case and reducing the issues in dispute to a minimum, notice of which shall be sent by the administrator to the parties or to their attorneys of record. The conference is informal and no oral testimony will be offered or taken. Any statement made by either party shall, in the absence of agreement, be without prejudice, but any agreement made is binding.

(b) Within a reasonable time of receipt, all medical reports and documentary evidence which the parties possess and which the parties intend to present as evidence at the pretrial conference shall be provided to the opposing party.

(c) At the pretrial conference, the judge shall make every effort to resolve any controversies or to plan for any subsequent trial of the case. The judge shall render a pretrial order immediately at the close of the pretrial conference. The pretrial order shall be set forth in a simplified manner on forms prescribed by the workers' compensation court. It may reflect any agreements reached between the parties, but shall grant or deny, in whole or in part, the relief sought by the petitioner. The pretrial order is effective upon entry. Any payments ordered by it including, but not limited to, weekly benefits, medical expenses, costs, and attorneys' fees, shall be paid within fourteen (14) days of the entry of the order.

(d) Any party aggrieved by the entry of the order by the judge may claim a trial on any issue that was not resolved by agreement at the pretrial conference by filing with the administrator of the workers' compensation court within five (5) days of the date of the entry of the order, exclusive of Saturdays, Sundays and holidays, a claim for a trial on forms prescribed by the administrator of the workers' compensation court. If no timely claim for a trial is filed or is filed and withdrawn, the pretrial order becomes, by operation of law and without further action by any party, a final decree of the workers' compensation court.

(e) All trials shall be assigned for hearing and decision to the same judge who presided over the pretrial of the matter. Notice of the trial shall be sent by the administrator to the parties and to their attorneys of record. All trials are de novo, except that issues resolved by agreement at the pretrial conference may not be reopened. Any other case or dispute under chapters 29 - 38 of this title that arises during the pendency of this trial, are forwarded immediately to the same judge for pretrial in accordance with this section and for any subsequent trial.

(f) If after trial and the entry of a final decree, it is determined that the employee or medical services provider was not entitled to the relief sought in the petition, the employer or insurer shall be reimbursed from the workers' compensation administrative fund, described in chapter 37 of this title, to the extent of any payments made pursuant to the pretrial order to which there is no entitlement.

28-35-46.1. Termination of payment - Accounting.

Within sixty (60) days after the discontinuance or suspension of compensation payments, the employer and/or insurer shall file with the director of labor and training, with a copy to the employee and his or her attorney, and also to the employer if filed by the insurer, an itemized statement of the total amount of compensation, medical expenses, and other expenses paid to or on behalf of the employee. This itemized statement shall be on a form prepared by the director of labor and training for that purpose.

28-36-1. Insurance or filing of bond required.

(a) Every employer subject to or who has elected to become subject to chapters 29 - 38 of this title as provided in § 28-29-8 shall secure in one of the following ways the compensation for which he or she is or may become liable under those chapters:

(1) By insuring and keeping insured against liability to pay the compensation in any stock or mutual company, or association, authorized and qualified to do business in this state and to take those risks in this state;

(2) (i) By furnishing to the director of labor and training satisfactory proof of his or her financial ability to pay directly to injured employees or their dependents the compensation, and by furnishing security, indemnity, or a bond in kind and in amount satisfactory to the director. The bond shall run to the director for the benefit of the employees and their dependents and with the indemnity or security is deposited with him or her;

(ii) Should the self-insured employer be unable to pay claims, the director shall call on the security, indemnity, or bond in kind. If these funds are deposited in a state account the account shall be an interest bearing account and all interest accrued shall be only for the benefit of employees and dependents of the self-insured employer.

(3) (i) By a combination of subdivisions (a)(1) and (a)(2) of this section, the employer may self-insure for a sum certain by furnishing security, indemnity or a bond in kind and amount equal to the sum certain, together with insurance for loss in excess of the sum certain;

(ii) Subdivisions (a)(2) and (a)(3) of this section apply upon compliance with the reasonable criteria and rules and regulations as established by the director to qualify and safeguard the underlying amounts of self-insurance; or

(4) By becoming a member of an authorized group self-insurance fund pursuant to chapter 47 of this title.

(b) (1) All employers who apply for approval to self insure for all or part of their liability, pursuant to subdivisions (a)(2) and (a)(3) of this section, shall pay an application fee based upon the number of employees located at the employer's place(s) of business in Rhode Island. The fees for new applications are set in accordance with the following schedule:

Number of Employees	Fee
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1-249	\$300
250-499	\$350
500-749	\$400
750-999	\$450
1,000 or more	\$500

(2) There is established a restricted receipt account within the department of labor and training into which is deposited the application fees set forth in subdivision (b)(1) of this section and the revenue derived from the assessment set forth in subdivision (b)(3) of this section. This account shall be used solely for the payment of the expenses of the department of labor and training in performing its duties under §§ 28-36-1 and 28-36-2. If an employer receives approval to self insure from the director for all or part of its liability pursuant to subdivision (a)(2) or (a)(3) of this section, the application fee paid by that employer is applied as a credit to reduce the amount of the assessment apportioned to that employer pursuant to subdivision (b)(3) of this section.

(3) The director of labor and training and the department of administration, annually, as soon as practicable prior to the start of the fiscal year, in each succeeding year, shall ascertain the total amount of expenses, including in addition to the direct costs of personal services, the cost of maintenance and operation, the cost of retirement contributions made and workers' compensation premiums to be paid by the state for or on account of personnel, rentals for space to be occupied in state owned or state leased buildings, and all other direct or indirect costs to be incurred by the department of labor in the next fiscal year in carrying out its responsibilities under §§ 28-36-1 and 28-36-2. Those expenses are assessed against all employers who self-insure for all or part of their liability under chapters 29 - 38 of title 28. The basis of apportionment of the assessment against each employer is that proportion of those expenses that the penal sum of the surety bond, indemnity, or security of each employer at the close of the preceding fiscal year bears to the total of the penal sum of all bonds, indemnity, or security for all employers.

(4) (i) In addition to current classified positions in the department of labor and training self-insurance unit, consisting of administrator, hearing officer, supervising trainer, and senior clerk stenographer, there are funded as unclassified positions:

(A) Two (2) administrative aide positions; and

(B) Two (2) financial evaluator analysts.

(ii) This staff's and/or any consultant's studies on feasibility and/or audits, as assessed by the administrator according to the rules of the department at the expense of any self-insured or proposed self-insured entity, shall be reported to the director of the department in the course of the department operations on the administration of the self-insurance unit. All funds are from the restricted receipt account of the department as collected by the self-insurance unit pursuant to subdivisions (b)(1) - (b)(3) of this section.

28-37-13. Payments into fund by insurers and employers.

(a) For the privilege of writing or renewing workers' compensation insurance or employer's liability insurance in this state, every mutual association or stock company authorized, to be subsequently referred to as "insurers", and for the privilege of being authorized, to make payments of workers' compensation directly to its employees, and every employer so authorized, to be subsequently referred to as "certified employers", shall annually make the following payments to the workers' compensation administrative fund:

(1) In the case of an insurer, an amount measured by four and one-quarter percent (4%), or any other percentage of return certified by the director pursuant to subsection (c) of the gross premiums received for workers' compensation insurance or employer's liability insurance written or renewed by it during the preceding calendar year on risks within this state, but not less than fifty dollars (\$50.00); and

(2) In the case of a certified employer, an amount measured by four and one-quarter percent (4 1/4%), or any other percentage of return certified by the director pursuant to subsection (c) of the premium which the employer would have had to pay to obtain workers' compensation insurance or employer's liability insurance for the preceding calendar year, but not less than fifty dollars (\$50.00), the amount to be determined by the director.

(b) Every certified employer and every insurer shall also pay into the workers' compensation administrative fund the sum of seven thousand five hundred dollars (\$7,500) for every case of injury causing death in which there is no person entitled to compensation.

(c) The director is authorized to determine on or before July 15 of each year except for the period ending June 30, 2000, when this determination is made on or before November 15 by experience or by other means, after taking into account projected expenditures for the current fiscal year and for the next fiscal year, what percentage of return, to be subsequently referred to as the "assessment", is needed to provide sufficient funds, in conjunction with appropriations from the general fund, if any, to fulfill the purposes enumerated in § 28-37-1(b) and shall certify this assessment to the governor and the general assembly. This assessment may be separately determined for insurers and for certified employers. The payments, due within sixty (60) days of notice each year pursuant to §§ 28-37-15 and 28-37-16, are made based upon the certified assessment. If the certified assessment in any given year is less than the assessment certified for the prior year, the percentage of reduction is applied to reduce pro rata employer payments and in accordance with this section, the director shall require the insurance carriers as described in subsection (a)(1) to reduce their premiums by a like percentage of premiums paid. If an insured thereafter cancels his or her policy or otherwise allows his or her policy to terminate, or the insured's policy is terminated, the insurance company shall make a pro rata cash refund not later than sixty (60) days after the reduction has been determined. The insurance company shall immediately certify to the director that the premium reductions have been made.

(d) (1) In recognition of the continued utilization of the workers' compensation system by insurers who have discontinued writing workers' compensation policies in the state, if any insurance company, deemed by the director of the department of business regulation to have been licensed on January 1, 1991, to write compensation policies, discontinues the issuance of workers' compensation policies, this company is and remains obligated to pay the workers' compensation administrative fund assessment for a period of six (6) years thereafter.

(2) In calculating the amount due by these insurance companies on the due date, as defined in subsection (c), of the year after which it discontinues writing policies in this state (the base year) the director of labor and training will calculate an amount equal to the assessment in effect on the last date the insurer issued workers' compensation policies multiplied by the gross premiums received for workers' compensation insurance or employers' liability insurance written or renewed by it during the base year on risks within this state, but not less than fifty dollars (\$50.00) each year.

(3) The basis for the calculation of the assessment in each succeeding year is a reduction of the base year assessment by increments of sixteen and two-thirds percent (162/3%) per each succeeding year.

(e) All penalties collected for any violation under chapters 29 - 38 of this title are paid into this fund.

(f) Any employer, insurer, self-insurer, or group self-insurer who has not paid assessments or who is not current with payment of assessments into this fund is not permitted to place a claim against the fund. Reimbursement to any employer, insurer,

self-insurer, or group self-insurer who is not current with payment of assessments into this fund is suspended immediately as of the first date of arrearage.

(g) To be eligible to use any of the services funded by the workers' compensation administrative fund an employer, insurer, self-insurer, or group self-insurer pays a fee of one thousand dollars (\$1,000) per claim, per month into the fund until the arrearage is paid in full in addition to any other interests or penalties.

42-16.1-15. Fraud prevention unit - Evidence confidentiality.

The unit's documents, reports, or evidence relative to a workers' compensation investigation are privileged and not open to public inspection. The documents, reports, and evidence are not subject to a subpoena duces tecum unless the unit consents, or a court determines the unit would not be jeopardized by compliance with the subpoena.

42-16.1-16. Immunity.

In the absence of fraud, malice or bad faith, no insurer or agent authorized by the insurer to act on its behalf, employee of the unit, or person providing information to the unit, is subject to civil liability for damages as a result of any statement, report, or investigation made pursuant to chapter 16.1 of this title. Nothing in this section interferes with any common law or statutory privilege or immunity.