

CONNECTICUT WORKCOMP UPDATE

BY

STRUNK DODGE AIKEN ZOVAS

Strunk Dodge Aiken Zovas hopes that you have enjoyed the summer season. As the summer winds down we want to provide you with an update of workers' compensation law in Connecticut.

NEWS AND NOTES:

Strunk Dodge Aiken Zovas is pleased to announce that Attorney Lucas Strunk has been named **the Best Lawyers® 2017 Employers' Workers' Compensation Lawyer of the Year for the Hartford region**. Attorney Strunk has been privileged to be awarded this honor in two of the last three years.

Attorney Strunk and his partners, Attorneys Anne Zovas, Richard Aiken, and Jason Dodge, have all been rated **AV Preeminent®**: by Martindale-Hubbell. The legal rating agency states that the **AV Preeminent®** rating is "The highest peer rating standard. This rating signifies that the lawyer's reviewed peers rank him or her at the highest level of professional excellence for their legal knowledge, communication skills and ethical standards."

The *2016 Official Connecticut Practitioner Fee Schedule* has been issued effective July 15, 2016. The commission website states that "This new publication will be effective for medical services rendered on or after July 15, 2016, regardless of the date of injury, that are payable to health care providers authorized or permitted to render care under the Connecticut Workers' Compensation Act. To order, please contact Optum at 1-800-464-3649, option 1, or visit www.optumcoding.com keyword "Connecticut".

The Connecticut Workers' Compensation Commission remains under-staffed at 15 commissioners. Commissioner Delaney retired in early 2016 but to date his replacement has not been named. It is unclear whether a new commissioner will be nominated; we will keep you informed of any changes.

SEMINARS:

Strunk Dodge Aiken Zovas can provide your company with workers' compensation seminars pertaining to various issues including review of the workers' compensation time line and subrogation. We can tailor our seminars from elementary to complex litigation issues. Please contact us if you would like to schedule a presentation.

MASSACHUSETTS CLAIMS:

Strunk Dodge Aiken Zovas are expanding their workers' compensation defense practice to Massachusetts workers' compensation claims. Attorneys Aiken, Katherine Abel, and Christopher D'Angelo all are licensed members of the Bar in Massachusetts. Please contact us regarding representing your company for Massachusetts claims.

CASE LAW:

In the recent Compensation Review Board case of *Clements v. Aramark Corporation*, 6034 CRB-2-15-10 (July 18, 2016), the board affirmed a dismissal of a head injury that occurred when the claimant fell on a sidewalk entering the facility where she worked early in the morning. The claimant was a food service worker who parked her car in the company parking lot; while walking the 15-20 feet into the employer's premises she fainted and suffered a head injury when her head struck the concrete sidewalk. The commissioner in dismissing the claim found that that claimant had a syncopal episode that was likely cardiac in origin. On appeal the claimant contended that that injury was due to the exertion of getting out of her car, standing up and walking; the CRB rejected this argument based on the evidence that showed the claimant did have prior cardiac issues. Moreover, the board disagreed with the claimant's assertion that even if the syncopal episode was due to non-occupational causes, the head injury claim should be found compensable because the claimant's injuries occurred due to striking the hard cement that was on the employer's premises. The CRB found that the cement was not a dangerous condition. This case supports defense of claims where the claimant collapses at work but the syncopal episode is not caused by the work and the injuries are not due to specific hazards on the job. We believe that a different result likely would

occur if the claimant was in an elevated position due to her work (example, on a ladder) and her injuries were made more severe due to a fall from a dangerous position.

LEGISLATIVE REPORT:

This year's 2016 regular session convened February 3rd and adjourned May 4th. The legislature faced serious budget issues, however, our State's red ink did not prohibit the passage of several bills relevant to the workers' compensation practitioner. The Governor has signed all the Public Acts into law. The special session after May 4th did not generate any additional relevant regulation.

A new public act which affects procedure is **Public Act No. 16-112 "An Act Concerning the Filing of Workers' Compensation Claims When a Municipality is the Employer."** This Act amends Section 31-294C and requires that an employee of a municipality send a copy of the notice of claim or Form 30C to the town clerk of the municipality in which he or she is employed. This requirement is therefore similar to a state employee who must send notice to the Commissioner of Administrative Services. The Act, which is effective July 1, 2016, will now therefore define effective service on a municipality. The Act was viewed as having no fiscal impact.

Public Act No. 16-73 "An Act Concerning Workers' Compensation Insurance in Sole Proprietors" addresses sole proprietors and amends 31-286a which concerns contractors on public works projects. The sole proprietors on such projects will not need to comply with the insurance provisions of the Act as long as the sole proprietor is not contracting with subcontractors and is not acting as a principle employer. Also, the sole proprietor must not have accepted the provisions of Chapter 568 pursuant to Section 10 of Section 31-275 and must have liability insurance in lieu of workers' compensation insurance.

The Act was viewed as a cost savings provision by the legislature as apparently the costs of workers' compensation coverage are picked up by the State of Connecticut in many situations. Clearly a sole proprietor at this point will not incur the costs of workers' compensation insurance if he or she qualifies under the amended provisions of 31-286a. The Act is effective October 1, 2016.

Practitioners should be aware that firefighters have successfully lobbied the legislature resulting in **Public Act 16-10 "An Act Establishing a Firefighters Cancer Relief Program."** The original house bill (No. 5262) described the Act's intent as "to provide workers' compensation for current or former uniformed members of a paid or volunteer fire department who suffer from certain diseases as a result of performing their jobs." This is not, however, a workers' compensation benefit and will be codified at Section 16-256g of the statutes. The Public Act may raise more questions than it answers as it

attempts to establish a non-lapsing General Fund account for the purpose of providing wage replacement benefits to fire personnel who have developed certain cancers as defined in Section 5(b) of the Act. That section will look familiar to the extent it mirrors proposed legislation from past sessions in that the firefighter must have passed a physical examination upon entry into such service, submitted to annual physical examinations, and not used cigarettes or any other tobacco products within fifteen years of applying for wage replacement benefits. The firefighter must also have worked more than five years beyond the effective date of the Act (February 1, 2017) and complied with the Federal OSHA standards for not less than five years. The cancer in question must also be one that is known to result from exposure to heat, radiation, or a known carcinogen.

Wage replacement shall not exceed twenty-four months and is paid at a rate not to exceed the average wage of all workers in our state. If concurrent employer provided benefits are paid, the total received cannot exceed pay rate at the time of diagnosis.

The Act suggests that firefighters will not be eligible for these benefits until after July 1, 2019 (but likely February 1, 2022 given five year requirement above).

Chapter 568 claims can still be pursued. The Act contains a provision that compensation from the fund cannot be collected concurrently with Chapter 568 benefits or unemployment benefits. Payment of these benefits is noted not to carry any weight in Chapter 568 proceedings.

The Act establishes a firefighters' cancer relief subcommittee at Section 4 of the Act. Section 7 of the Act requires additional reporting requirements with respect to firefighters present on various calls not only documenting exposure but the duration of exposure.

Benefits from the fund are ultimately subject to available funds contained in the firefighters' cancer relief account. The benefits are stated to be solely for the purpose of wage replacement. The account is to be funded by utilizing one percent per month per line from the enhanced 911 telecommunications fund (although questions have arisen relative to the interaction with federal funding that may require further modification of the funding of the account). Firefighters who no longer actively serve would be eligible for wage replacement benefits but must apply within five years of their last service (and must have had annual physicals during that time).

I anticipate that you will see further amendment to this law before firefighters begin to access the account. Practitioners should be aware of this potential alternative in those cases which causal relationship to employment cannot be established.

On an issue becoming ever more relevant to the practice of workers' compensation, the legislature continues to address opioid abuse and control of opioids in our state. **Public Act 16-43 "An Act Concerning Opioids and Access to Overdose Reversal Drugs"** expands the use of opioid antagonists primarily for purposes of attempting to reduce

opioid induced deaths. One provision of note is that the new law with certain exceptions prohibits a prescribing practitioner from authorizing more than a seven day supply of an opioid drug to an adult for first time outpatient use. The noted exception allows for professional medical judgment to determine if greater than a seven day supply is necessary for treatment of chronic pain or for palliative care. The practitioner must document the condition "triggering" a prescription of greater than a seven day supply and must document that an alternative to the opioid drug was not appropriate. (See Section 7). The Act is effective July 1, 2016.

Special Act 16-4 "An Act Concerning a Study of Impediments to Insurance Coverage for Substance Use Disorder Treatments" calls for a study to examine the impediments under health insurance policies or health benefit plans for insureds who receive treatment for substance use disorders. The insurance commissioner shall conduct a study and report to the joint standing committees cognizant of matters relating to insurance and public health.

Public Act 16-39 "An Act Concerning the Authority and Responsibilities of Advanced Practice Registered Nurses" (APRNs) provides authority for APRNs to certify, sign and otherwise document medical information in a number of situations currently required by a physician including issuance of do not resuscitate orders, certifying the patient for medical marijuana use (except glaucoma), certifying disability for purposes of cancelling health club contracts, continuing education waivers or extensions for various health professions, and notification of specified people before removal of life support. The bill makes no reference to Chapter 568 but may provide some relevance in situations in which a workers' compensation claimant is receiving treatment at an office from an APRN and in particular to Forms 36.

Please note that the legislature did belatedly take proper action by appointing Commissioner Scott A. Barton a new five year term beginning January 26, 2015, and Chairman John A. Mastropietro to a new term of five years beginning April 1, 2015. Congratulations to the commissioners.

Also, a final note relative to the post-traumatic stress disorder legislation: A late attempt was made to revive the PTSD bill but failed when opponents, primarily municipalities, recognized the attempt to pass the exhaustively debated legislation at the eleventh hour.

Please do not hesitate to check the complete text of the 2016 Public Acts referenced above as well as the file copies which contain excellent summaries of the bills and further explain in many cases the purpose of the legislation. See www.cga.ct.gov.

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