

LEGISLATIVE REPORT

This year's legislative session ended on June 5th. The session was very active in addressing workers' compensation law, however, as the dust settled, the results in terms of new provisions were mixed.

The Chairman and the Workers' Compensation Executive Committee had combined efforts in **HOUSE BILL 7241 "An Act Concerning Minor and Technical Changes to the Workers' Compensation Act"** which would have among other changes renamed the commissioners Administrative Law Judges. The bill also "cleaned up" our Act by repealing some obsolete provisions. The House had passed the bill unanimously, however, in the chaos and scrambling at the eleventh hour, the Senate failed to take action. Whether the bill can be saved in the special session this summer is unlikely but remains to be seen.

HOUSE BILL 5883 "An Act Concerning Workers' Compensation Insurance Coverage for Detoxification for Certain Injured Employees, Local and Regional Board of Education Employee Notices and Reimbursement of Lost Wages for Appearance at a Deposition" also reached the Senate calendar but was not subject of a vote. The bill would have codified current practice regarding detoxification for opioid dependency. The bill also would have clarified where Forms 30C were filed for teachers (at the Board of Education, not the Town Clerk's office) and would have required claimants to be paid their hourly wage for attending depositions if not receiving benefits.

One can expect both **House Bill 7241** and **House Bill 5883** to be pursued again in the next session.

The legislation that attracted the most attention and media coverage addressed post-traumatic stress disorder benefits for certain first responders. **PUBLIC ACT 19-17 "An Act Concerning Workers' Compensation Benefits for Certain Mental or Emotional Impairments, Mental Health Care for Police Officers and Wellness Training for Police Officers, Parole Officers and Firefighters"** will become law once signed by the governor.

The legislation truly represents a compromise by the many stakeholders involved in the debate at the legislature over the past several years.

The new law provides that effective July 1, 2019, Section 31-275 will be amended to allow police officers, municipal constables, parole officers, and firefighters, both paid and volunteer, to receive limited workers' compensation benefits for PTSD.

In order to be eligible for benefits, a board certified mental health professional, psychiatrist or psychologist who has experience in the diagnosis and treating of PTSD must make the diagnosis consistent with the most recent edition of the DSM.

Eligibility is triggered by a “qualifying event” in which the claimant in the line of duty:

- a) Views a deceased minor;
- b) Witnesses the death of a person or an incident involving the death of a person;
- c) Witnesses an injury to a person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause;
- d) Has physical contact with or treats an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of other intervening cause;
- e) Carries an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause; or
- f) Witnesses a traumatic physical injury that results in the loss of a vital body part or a vital body function that results in permanent disfigurement of the victim.

The role of the qualifying event in causing the PTSD must be viewed as a substantial factor. That factor, however, is subject to there not being another event or source of stress that was the primary cause of the PTSD.

The law will still contain exclusions that the disorder not result from disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement or similar action of the officer or firefighter.

Mental health professionals will need to comply with any workers’ compensation guidelines for approved medical providers including but not limited to guidelines on release of past or contemporaneous medical records.

The notice provisions of Section 31-294c will also now provide for notice of claims for PTSD. The provisions applicable to these claims, however, will allow for the standard contest of the claim within 28 days after receipt of proper notice but will allow for a without prejudice payment within 28 days and thereafter allow 180 days to contest the claim.

The benefits available to the claimant will be paid under Section 31-307 temporary total or 31-308 temporary partial for a maximum of 52 weeks from the date of diagnosis. No benefits, however, will be awarded beyond 4 years from the date of the qualifying event that formed the basis for the personal injury.

The weekly benefit when combined with other benefits available to the claimant shall not exceed the average weekly wage paid to such officer or firefighter.

The new law specifically excludes any claim for permanent partial disability benefits under Section 31-308(b) or Section 31-308a.

Of note is that Section 31-294h is not repealed. That section addresses other mental or emotional impairments arising out of the officer's use of deadly force or being subjected to deadly force in the line of duty. Similarly, firefighters who develop PTSD from witnessing the death of another firefighter while engaged in the line of duty shall be entitled to treatment. This section therefore continues to provide an option in certain situations that would not be limited to 4 years of care.

The bill itself was almost derailed in the Senate by last minute questions regarding emergency services personnel. As a result, a provision was added that the Labor and Public Employees Committee examine the feasibility of expanding the provisions of the new law to EMS personnel and Department of Correction officers. This examination is to be undertaken to include consultation with all stakeholders to the legislation including representatives of the workers' compensation commission. Any further action will require a bill in the next session that apparently could provide these additional workers with a retroactive protection for qualifying events after July 1, 2019.

Incorporated in the new legislation is also some job protection provisions that had been pending in another bill before the legislature. This section prohibits a police officer from being discharged, disciplined or penalized because he or she receives mental health services or surrenders his or her firearm to seek such services. The provision does not apply to officers who seek or receive mental health care services to avoid disciplinary action or who refuse to submit to mental health examination. The bill also addresses the return of weapons or ammunition to an officer; prohibits a civil action against a law enforcement unit in the case of an officer using personal firearms under certain conditions. Please see the bill for the specific additional provisions. Of note is that the Mohegan and Mashantucket Pequot police units are included in this aspect of the new law but not included in the PTSD component.

Also enacted was **SPECIAL ACT 19-10 "An Act Establishing a Task Force to Study Remedies and Potential Liability for Unreasonable, Contested or Delayed Workers' Compensation Claims."** The original bill proposed to make interest and attorney's fees mandatory in the case of undue delay or unreasonable contest and sought to reestablish civil claims against insurers and third party administrators. The legislation was ultimately reworked such that it now establishes a task force to study the issue of contested claims, undue delay, and the law regarding bad faith handling of workers' compensation claims. The Act outlines in detail the issues to be studied.

The task force will include representatives of the various stakeholders, commission representatives and legislators including a physician that treats and one who performs respondents' medical evaluations. The original bill was subject of fiscal note which

reflected costs associated with additional formal hearings at \$650,000.00 in fiscal year 20, as well as \$683,000.00 in salaries and fringe benefits associated with the staffing for those formal hearings. Fiscal note also referenced the costs to defend suits and the state's liability for claims against its TPA.

The task force, to be formed by August 1, 2019, is to report back to the legislature by January 1, 2020.

A final workers' compensation related new law not yet subject of a Public Act number is **SENATE BILL 556 "An Act Concerning Additional Compensation for Certain Retired Public Safety Employees."** The law will allow a municipality by two-thirds vote of its legislative body to provide additional compensation to a public safety employee who retires due to a disability suffered in the line of duty. The law appears to have been driven by the circumstances of a Norwalk police officer. The additional compensation is at the discretion of the municipality and requires a permanent and severe disability. The benefit shall be an amount equal to the difference between other benefits received, including workers' compensation, and the employee's regular rate of pay. The benefits are to be paid until the employee reaches the age of sixty-five.

In other legislation the House and Senate confirmed the nomination of Commissioners Pedro Segarra and Toni Fatone and confirmed the nomination of Karen Welch as a member of the advisory board. Congratulations to the three of them.

All of the above legislation is available for review at the General Assembly website, cga.ct.gov.