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CONNECTICUT WORKERS' COMP UPDATE

The law firm of **Strunk Dodge Aiken Zovas (SDAZ)** provides you with our Summer 2020 **WORKERS' COMPENSATION UPDATE**. Please feel free to share this update with your colleagues. If someone inadvertently has been left off our email list and would like to receive future updates they can contact **Jason Dodge** at jdodge@ctworkcomp.com or 860-785-4503.

Strunk Dodge Aiken Zovas in our role as an "essential" place of business as defined by Governor Lamont has remained open throughout the Covid-19 pandemic providing service and guidance to our clients in this difficult time. We wish good health to all our colleagues throughout the workers' compensation community.

The Connecticut Workers' Compensation Commission through the leadership of Chairman Morelli has also remained open for business. Although most hearings are being done telephonically some formal and CRB hearings may be held in person as of August 1, 2020. The Commission and the Governor have been able to move quickly to make changes in order to accommodate claimants and respondents. See below the Workers' Compensation Commission News section which reviews all of the recent temporary changes in the Commission.

COVID-19 AND WORKERS' COMPENSATION IN CONNECTICUT

On July 24, 2020 Governor Lamont issued Executive Order 7JJJ which establishes a **rebuttable** presumption of compensability for certain limited Covid-19 claims. This was a semi-victory for respondents since there was concern that the Order would establish an **irrebuttable** presumption of compensability of Covid-19 claims for essential workers. Now, in all cases, employers will be able to raise a defense to a claim of Covid-19, if there is one, and can prevail if the Commissioner determines that the employment, by a preponderance of the evidence, was not the cause of the claimant contracting Covid-19.

For a claimant to have a rebuttable presumption in favor of compensability of an occupational disease claim certain factors must be present pursuant to Executive Order 7JJJ. First, the claimant must have missed work due to a diagnosis of Covid-19 or symptoms that were diagnosed due to Covid-19 during the period March 10, 2020

through May 20, 2020. Additionally, the claimant had to have a diagnosis of Covid-19 within three weeks of the "date of injury" (defined to be date of disability or death) either 1) by positive laboratory test or 2) based on symptoms by a licensed physician, P.A. or R. N. Also, the claimant must have worked outside of their home at least one of fourteen days prior to the date of injury and had not received an offer or directive from the employer to work from home instead of at work. If the date of injury was more than fourteen days after March 23, 2020 the claimant had to be employed by an employer deemed essential by the Connecticut Department of Economic Development pursuant to Executive Order 7H. Assuming all those factors are answered in the affirmative then the claimant's Covid-19 claim would be found compensable as an occupational disease unless the employer or insurer can prove by a preponderance of the evidence (more likely than not) that the condition is not due to work.

For those claims for Covid-19 that do not meet the requirements outlined above, a claimant could still pursue a claim, but it would be their burden of proof to establish a compensable occupational disease. The Governor's Order confirms that "occupational diseases must ordinarily be peculiar to and distinctively associated with the occupation in which the employee was engaged." This evidentiary burden is higher for the claimant than in a normal workers' compensation claim involving a traumatic injury.

Executive Order 7JJJ makes clear that the employer is entitled to a credit against any total or partial disability claims for any payments made to the claimant under the Families First Coronavirus Response Act or other sick leave that is paid through a program designed to respond to Covid-19 claims.

The employer is also entitled to receive a copy of all positive Covid-19 results.

The order also amends General Statutes Section 31-290a; that statute is the wrongful termination/discrimination law and prohibits discrimination or termination in response to filing a workers' compensation claim. The amendment to the statute prohibits any discipline of employees for filing a claim and actions that "deliberately misinform or otherwise deliberately dissuade an employee from filing a claim for workers' compensation benefits." These changes will affect not only Covid-19 claims but all other claims. In order to issue an Executive Order, the Governor pursuant to Connecticut General Statutes Section 28-9(b) must do so in order to protect the "public health." It is unclear why amendment of Section 31-290a was required by public health concerns due to the pandemic.

The Executive Order is interesting in that it seems to bar certain Covid-19 claims from being given the presumption of compensability based on the actions of the employee. If the claimant "chose" to come to work as opposed to working from home as offered by the employer those claims due to exposure to Covid-19 at the job site will not be given the presumption of compensability.

The Governor's order is effective immediately and remains in effect for six months.

In general, diseases such as the flu or common cold are not considered compensable, however, that does not bar a claim for disease to be found compensable. Attorneys who are seeking to have Covid-19 found to be compensable should be aware of the burden of proof in establishing claims; respondents should be aware that certain occupations will certainly have compensable Covid-19 claims. Respondents may have a difficult time determining what claims they should accept and those that they should, reasonably, defend.

There are three types of Connecticut Workers' Compensation claims: (1) traumatic injuries; (2) repetitive trauma claims; and (3) occupational disease claims. As a practical matter it is doubtful that Covid-19 would be claimed as a repetitive trauma injury. We have been advised that transmission of Covid-19 through needle stick is not expected. Accordingly, if a claim for Covid-19 is going to be pursued it is likely going to be based on occupational disease theory.

In order to understand how such claims are made and the burden of proof associated with occupational disease claims we must first look at the statutory language. **Connecticut General Statutes §31-275(15)** defines an occupational disease to be "any disease peculiar to the occupation in which the employee was engaged and due to excess of ordinary hazards of work." While this language seems to require more in terms of proof on the part of the claimant than a traumatic injury claim, the statute also provides a more generous time to file such claims: **General Statutes §31-294c** allows the claim to be filed three years from the first manifestation of symptomatology of an occupational disease (generally when the employee is advised that his condition is due to work by a physician).

Two Connecticut Supreme Court cases that were litigated by **Attorney Jason Dodge of SDAZ** provide guidance as to what is necessary to prove a compensable occupational disease claim. In *Hansen vs. Gordon*, 221 Conn. 29 (1992), a dental hygienist claimed that her hepatitis condition was due to exposure to bodily fluids in the course of her work. In that case the claimant had to establish that in her job as a dental hygienist the claimant was at heightened risk to contract the disease. Expert testimony from the UConn Dental School was presented documenting that dental hygienists were more likely to contract the condition of hepatitis than people in other jobs. The Supreme Court affirmed the finding of compensability and defined "peculiar to the occupation" and "in excess of the ordinary hazards of employment" to refer to those diseases in which there is a causal connection between the duties of the employment and the disease contracted by the employee. The Court stated that it need not be unique to the occupation of the employee or to the work place but it should be "**distinctively associated with the employee's occupation such that there is a direct causal connection between the duties of the employment and the disease."**

In *Malchik vs. Division of Criminal Justice,* 266 Conn.728 (2003), a State Trooper

claimed that coronary artery disease which developed one year after his retirement was an occupational disease and related to the stress of his job as Trooper. The Court rejected that argument and concluded that the condition claimed was not an occupational disease because it "**was not so distinctively associated with the plaintiff's occupation such that there is a direct causal connection between the duties of the employment and the disease contracted."**

Based on the above, if a claimant does not qualify for the rebuttable presumption for Covid-19 claims established by Executive Order 7JJJ then a claimant needs to prove causation between the work and the disease but may also need to prove that the employment itself places the claimant at increased risk to contract the disease.

STRUNK DODGE AIKEN ZOVAS NEWS

Anne Zovas of SDAZ participated in a Zoom legislative informational hearing on June 1, 2020. The meeting was held jointly by the State Legislative Insurance and Labor Committees for the purpose of addressing the possibility of enacting new legislation under the Workers' Compensation Act that will assist claimants in filing Covid-19 claims. (See discussion above regarding recently issued **Executive Order 7JJJ**). Attorney Zovas testified at the hearing against the proposal for a "*presumption*" statute and to inform the legislators that Connecticut Workers' Compensation law allows for Covid-19 claims to be proven. She emphasized that the system is currently working; that many claims are being paid without prejudice and that there is no need to enact new laws that would result in more litigation and a drastic increase in costs. Chairman Morelli also testified and explained that of 739 claims filed in the system only 29 hearing requests had been made. The Chairman supported that the system is handling the claims as priorities and that many claims are being paid without prejudice.

Best Lawyers has again named **Attorney Lucas Strunk of SDAZ** Workers' Compensation Lawyer of the year for employers in Connecticut for 2020. Congrats to Luke for being recognized by his peers for his expertise in workers' compensation law. **Attorneys Richard Aiken and Jason Dodge of SDAZ** also were named to Best Lawyers.

SDAZ is a sponsor of **Kids' Chance of Connecticut.** Kids' Chance of Connecticut provides educational scholarships to the children of Connecticut workers who have been seriously or fatally injured in a work-related accident. If you are aware of a child who may qualify for a scholarship to a college or technical school please go to the following website for an application www.kidschanceofct.org. For the academic year 2020-2021 Kids' Chance of Connecticut has recently awarded eight scholarships to students going to college. Kids' Chance of Connecticut's annual charity golf outing on September 28, 2020 has been cancelled due to Covid-19 concerns. If you have any

questions about Kids' Chance of Connecticut or would like to become part of our organization please contact **Jason Dodge or Phil Markuszka of SDAZ.**

You can now follow us on Facebook at https://www.facebook.com/Strunk-Dodge-Aiken-Zovas-709895565750751/

SDAZ can provide your company with free seminars regarding Connecticut Workers' Compensation issues. Please contact us about tailoring a seminar to address your particular needs.

We do appreciate referrals for workers' compensation defense work. When referring new files to SDAZ for workers' compensation defense please send them to one of the partners' email: azovas@ctworkcomp.com, raiken@ctworkcomp.com, lstrunk@ctworkcomp.com, jdodge@ctworkcomp.com, HPorto@ctworkcomp.com or by regular mail. We will respond acknowledging receipt of the file and provide you with our recommendations for defense strategy.

Please contact us if you would like a copy of our laminated "Connecticut Workers' Compensation at a glance" that gives a good summary of Connecticut Workers' Compensation law to keep at your desk.

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WORKERS' COMPENSATION PRACTICE TIP

Practice tip: Employees often incorrectly claim Head of Household tax filing status in lieu of claiming Single status in order to maximize tax savings. This does result in a significantly higher compensation rate for Workers' Compensation purposes. In order to qualify as Head of Household a claimant must be 1) unmarried or considered unmarried at the end of the year; 2) have paid more than half the cost of maintaining their home for the year; and 3) must have one or more qualifying dependents living with them more than half the year. It is recommended that you confirm the claimant was eligible to file as Head of Household before issuing jurisdictional or specific Voluntary Agreements accepting a compensation rate.

CONNECTICUT WORKERS' COMPENSATION COMMISSION NEWS

CHANGES IN THE ADMINISTRATION OF WORKERS' COMPENSATION CLAIMS DUE TO COVID-19

Per Memorandum 2020-13 the Commission will begin a limited number of "in-person" formal and CRB hearings on August 1, 2020. All other formal hearings will be done through Microsoft Teams.

All time requirements are hereby waived per Order of Governor Lamont's Executive Order 7K.

The 20-day requirement for payment is suspended under General Statutes Section 31-303.

The commission has informally stated this regarding Covid-19 testing and compensable surgeries:

"It has come to our attention that many doctors are requiring covid-19 testing as a part of routine pre-operative physicals. Please be advised that if the testing is required for a doctor to perform an authorized surgery for a workers' compensation claimant, the testing should be covered and reimbursed."

Job searches are waived for temporary partial benefits as of Monday, March 16, 2020.

The Commission no longer approves Form 36's administratively. Objections to Form 36's that are received after 15 days will be considered by the Commission.

The requirement to send forms by certified mail is suspended. They can be sent by regular mail or fax. The Commission recommends the parties "take any measures which would support proof of delivery and receipt of any forms should subsequent substantiation be required."

Remote notarization is authorized.

Most workers' compensation hearings must be done telephonically.

The three-day rule for cancellation of informal hearings is suspended.

Continuances of hearings are liberally granted.

Out-of-state stipulations may be used for in-state claimants. Canvassing of the pro se

claimants by phone is strongly suggested.

The Commission now will strictly require the parties to speak to each other before requesting a hearing.

Regarding the call-in procedure for hearings it can proceed in one of two fashions: 1) the parties contact each other by phone prior to the hearing and then while they are both on the line call the commissioner's office for the hearing, or 2) advise the commissioner the day before the hearing of their direct line where they can be reached at the time of the hearing.

There are no apportionment hearings at the present.

Commissioner Memorandum 2020-09

The Chairman on April 1, 2020 issued the following memorandum re telemedicine:

WCC RME AND CME POLICY REGARDING THE USE OF TELEMEDICINE

In response to the ongoing COVID-19 health crisis WCC has decided that RMEs and CMEs can be conducted using telemedicine at the discretion of the doctor. The following procedure will apply:

1. The decision to conduct an RME or CME by telemedicine will be made by the doctor; claimants who refuse to participate, will be subject to the same consequences as if they had failed to attend an in-person appointment.

2. For RMEs and CMEs conducted by telemedicine:
   a. Claimants shall advise the doctor at the time of the telemedicine examination if anyone else is present and must identify such person;
   b. Attorneys, paralegals and/or hearing representatives are prohibited from being present with a claimant at the time of a telemedicine examination;
   c. If claimant or anyone present with claimant intends to record the examination, or any portion of the examination, the doctor must be advised in advance and must expressly consent.

3. In addition, for a CME conducted by telemedicine, the party submitting the medical packet to WCC shall ensure that all diagnostic studies, including images (e.g. CD of MRI, CT-scan) are included in the packet.

THE COMMISSION HAS PROVIDED THE FOLLOWING UPDATE REGARDING THE USE OF TELEMEDICINE AND BILLING:

"The Workers' Compensation Commission is encouraging the use of telemedicine in response to the Covid-19 pandemic. Providers have been instructed to bill telemedicine

visits with the appropriate CMS or CPT identified telemedicine code, utilizing modifier 95 together with place of service 02. Carriers have been advised to reimburse these visits at the fee schedule rate with no reduction (excluding contractual discounts).

Until further notice, the Workers' Compensation Commission is instructing that workers' compensation claims billed with place of service 02 shall be reimbursed at the **non-facility rate**."

The Families First Coronavirus Response Act (FFCRA) provides to certain employees paid sick leave and expanded family and medical leave for specific reasons related to coronavirus. For more information regarding this go to the following link:

https://wcc.state.ct.us/download/acrobat/DOL%20FFCRA%20Poster%203-25-2020.pdf

The State of Connecticut New Britain (6th District) workers' compensation office has moved. Their new address is:

Workers' Compensation Commission
24 Washington Street
New Britain, CT 06051
Phone: (860) 827-7180
Fax: (860) 827-7913

The commission does have a website where you can look up such information as to whether a hearing is assigned, list of all claims for an employee, status of a form 36, and interested parties. This is quite a useful site and is a different website than the commission's main site. It can be found at:

http://stg-pars.wcc.ct.gov/Default.aspx

CASE LAW

DIAZ V. CITY OF BRIDGEPORT, 6333 CRB-4-19-6 (April 29, 2020)

The claimant was awarded permanent partial disability award under Section 7-433c for heart condition; the award called for a payment of 245 weeks at a rate of $551.13 per week beginning in February 2020. The claimant sought a "commutation" or lump sum payment of the last 123 weeks of the award to pay his property taxes and credit card debt. The Commissioner approved the award commutation at a discount of 3%. The municipality objected claiming the claimant received a double recovery, was being paid

at higher than the maximum rate allowed in view of the commutation and that it violated the cap provisions of the hypertension statute. The CRB affirmed the commutation. This question has to be posed: how does a municipality budget for such a large lump sum payment issued out of the blue?

JOSE DEJESUS V. R.P.M. ENTERPRISES, INC. AND/OR ROBERT M. MARION, SR., 6333 CRB-4-19-6 (April 29, 2020)

At issue in this case (hereinafter referred to as *DeJesus II*) was whether the trial commissioner erred 1) in finding that the claimant sustained a compensable injury for which he was entitled to indemnity benefits and payment for medical bills, 2) in finding R.P.M. Enterprises, Inc. and/or Robert M. Marion, Sr. were uninsured employers on the date of the injury and jointly and severally liable for the benefits awarded by the trial commissioner, and 3) in imposing a civil penalty of $50,000 pursuant to Section 31-288(c) based on the employers' failure to carry worker's compensation insurance as required under the Act ("2019 Finding").

Issues relating to the claim were previously considered by the CRB in DeJesus v. R.P.M. Enterprises, Inc., 6201 CRB-1-17-7 (Nov. 8, 2018) ("*DeJesus I*"). The appeal in *DeJesus I* sought review of the trial commissioner's finding regarding subject matter jurisdiction ("2017 Finding"). The trial commissioner decided to bifurcate the number of issues that were presented and ordered additional proceedings to discuss issues pertaining to the merits of the underlying claim. The CRB in *DeJesus I* affirmed the trial commissioner's finding that the claimant was an employee who suffered a compensable injury, the claim was not time-barred as the claimant had satisfied the medical care exception to the requirement of written notice, and liability also attached to Robert Marion Sr. in addition to R.P.M. under what was in effect a piercing of the corporate veil.

The respondents in *DeJesus II* argued that *DeJesus I* was not a final judgment and therefore they should not be collaterally estopped from raising issues heard and decided by the CRB in *DeJesus I*. The CRB reviewed Section 31-301(a) and Section 31-301(b) and held that the two statutes when read together indicate that an aggrieved party has the right to file an appeal, but if an appeal is not taken then the decision of the CRB is final within twenty days. The CRB held that any issues heard and decided in *DeJesus I* for which the respondents believed appellate review was appropriate should have been appealed and presented to the Appellate Court.

The CRB went on to indicate that the doctrine of law of the case also applied to the findings and conclusions set out in the trial commissioner's 2017 Finding and relied on

in the findings and conclusions at issue in *DeJesus II*. The CRB also found that the trial commissioner's imposition of a fine pursuant to Section 31-288(c) was appropriate, indicating that an overall review of the notices and the transcripts reflected that the respondent-employer were or should have been aware of their exposure to fines and sanctions for failing to carry workers' compensation insurance. However, the CRB decided to remand the matter to give the respondent-employers an opportunity to be heard on the issue of the amount imposed as a sanction for failure to carry worker's compensation insurance. This was the sole issue on remand; the remainder of the trial commissioner's 2019 Finding was affirmed.

HOWARD AUSTIN V. COIN DEPOT CORPORATION, 6318 CRB-4-19-4 (MAY 26, 2020)

The claimant, Howard Austin, Jr., was entitled to a COLA adjustment of $27,059.46 and the respondent Connecticut Guaranty Fund issued a payment in that amount to the claimant care of his counsel. The check was payable to "Howard Austin." The claimant's attorney inadvertently gave the check to the claimant's father, Howard Austin, Sr., who was also a client. More than a year later, Howard Austin, Jr., sought payment of the COLA that he was not paid, contending that the check should have been issued to "Howard Austin, Jr." and not just "Howard Austin." The voluntary agreement in the case listed the claimant as "Howard Austin." The Commissioner and Board found that the respondent had fulfilled its obligation to pay the COLA.

KREVIS V. CITY OF BRIDGEPORT, 6321 CRB-4-19-4 (MAY 28, 2020)

The claimant had a compensable hypertension claim under Section 7-433c and was paid a total of 35% of the heart. After retirement he needed a pacemaker but the medical evidence and RME testimony suggested that the accepted hypertension claim was not a substantial factor in causing need for the pacemaker. The Commissioner and the CRB concluded that the claimant's need for the pacemaker was unrelated to the accepted condition and dismissed the pacemaker claim. In doing so, the Board cited the Connecticut Supreme Court decision in *Coughlin v. Stamford,* 334 Conn. 857 (2020), noting that in Section 7-433c claims injuries that develop post-retirement must be causally related back to accepted claims that occurred during the period of employment in order to be compensable.

BELLERIVE V. THE GROTTO INC., 6335 CRB-5-19-6 (JUNE 10, 2020)

In this case the CRB held that a workers' compensation policy was cancelled under Section 31-348, reversing the trial commissioner's decision. Liberty Mutual filed electronic cancellation through NCCI in accordance with Section 31-348. The employer

contended that notice should have been sent certified mail per Section 31-321. The Board disagreed and found that electronic notification was the protocol of the Commission and satisfied the statute. The CRB also concluded that the fact there was communication between the employer and the carrier post the termination and actual premium paid was not sufficient to void the cancellation. In reaching their decision the Board cited the Appellate Court case of *Yelunin v. Royal Ride Transportation,* 121 Conn. App. 144 (2010).

GOULBOURNE V. STATE OF CONNECTICUT/DEPARTMENT OF CORRECTION, 6329 CRB-1-19-5 (JUNE 10, 2020)

The CRB reversed a Commissioner's dismissal of a total disability claim and remanded the case back to the Commissioner to seek clarification from a Commissioner's Examiner regarding his opinion on work capacity. The claimant had a compensable heart claim and alleged he was totally disabled. Competing vocational expert testimony was introduced regarding the issue. Also, there was a CME with a cardiologist, Dr. Anthony, who in a cryptic note found that the claimant was "unable to perform any gainful work capacity." The Commissioner found the respondent's vocational testimony credible that the claimant could work and dismissed the total incapacity claim. In doing so, the Commissioner determined that Dr. Anthony's opinion was a "vocational" opinion and because he was not a vocational expert he was not bound to follow it. The CRB reversed stating that the Commissioner should have sought further clarification of the opinion of Dr. Anthony.

CLARK V. TOWN OF WATERFORD, 6339 CRB-2-19-7 (July 15, 2020)

The claimant was a part-time firefighter for the Town hired before the Heart and Hypertension Act, Connecticut General Statutes Section 7-433c was ended on July 1, 1996. The claimant suffered a myocardial infarction on June 24, 2017 while he was still a firefighter and he sought benefits under Section 7-433c. The Commissioner and the CRB both held that the claimant was entitled to benefits under the statute notwithstanding the defense raised by the Town that the claimant did not qualify for benefits since Section 7-425(5) defined a member of the fire department to be someone who works more than 20 hours per week. The Board essentially concluded that there is no difference for purposes of Section 7-433c whether the claimant is full or part-time member of the fire department. The decision is noteworthy for the well-written dissent issued by Commissioner Watson; it is rare at the CRB level to have dissents issue in the decisions. It is likely the Town will appeal this decision and cite on appeal Commissioner Watson's dissent.

DOMINGUEZ V. NEW YORK SPORTS CLUB, 198 Conn. App. 885 (2020)

In this case the Appellate Court affirmed a finding of preclusion for failure to file a timely disclaimer pursuant to Connecticut General Statutes Section 31-294c(b). The Board below had reversed a commissioner decision that had denied preclusion. The Appellate Court concluded that the carrier had failed to file a timely disclaimer; when the disclaimer was finally filed the carrier maintained that the injury was not compensable. At the formal hearing the carrier contended that they had not been asked to pay any medical bills or indemnity during the 28 day period after the notice of claim was filed and therefore the so-called "safe-harbor" provisions of Section 31-294c that allow for denial to be issued up to one year after notice issued should apply. The carrier cited *Dubrosky v. Boehringer Ingelheim Corp*., 145 Conn. App. 261 (2013), *cert. denied*, 310 Conn. 935 (2013), in support of their position. The Appellate Court concluded that after the notice was issued the carrier failed to take any action indicating that they accepted compensability of the claim and therefore they could not claim the "safe harbor" provisions applied to them. The Appellate Court determined that it is the employer's obligation to timely investigate and pay a claim if it wants to avail itself of the "safe harbor" provisions of the statute.

SALERNO V. LOWE'S HOME IMPROVEMENT CENTER, 198 Conn. App. 901 (2020)

In this case the carrier failed to file a Form 43 until more than one year after Form 30C was filed in a repetitive trauma claim. The carrier objected to a motion to preclude that was filed contending it was "impossible" to pay the claim because the claimant had put his bills and lost time through personal insurance. The Appellate Court indicated they were not willing to extend the "safe harbor" provision, as contemplated by General Statutes § 31- 294c(b), to cases in which there is no evidence that the respondents ever accepted the compensability of the claim, based on their conduct of written filings. The carrier never issued a Voluntary Agreement or through their conduct agreed that the matter was compensable and therefore the Court upheld the decision that the employer was precluded. The so-called "safe harbor" provision of the statute allows a contest to be filed up to a year after the notice if the employer pays all benefits owed within 28 days of the notice. The Appellate Court refused to extend the limited exception to preclusion based on "impossibility" to pay a claim found in the decision in *Dubrosky v. Boehringer Ingelheim Corp.,* 145 Conn. App. 261*, cert. denied,* 310 Conn. 935 (2013), to this set of facts.

DUCHARME V. CITY OF PUTNAM, 161 Conn. 135 (1971)

The Governor has now issued Executive Order 7JJJ that there is a rebuttable presumption of compensability for certain Covid-19 claims (see above). The Governor may have decided to make this a rebuttable presumption since prior attempts to have an irrebuttable presumption in Connecticut workers' compensation claims have been found unconstitutional. In *Ducharme v. City of Putnam,* 161 Conn. 135 (1971), the Connecticut Supreme Court determined that the conclusive presumption established under Connecticut General Statutes Section 7-433a for police and firefighters regarding heart and hypertension claims was unconstitutional since it was a "denial of equal protection of the laws and because the conclusive presumption contained in that statute results in a denial to the defendants of equal protection of the laws and deprives them of property without due process of law." Id., 137 The applicable statute provided benefits under the workers' compensation statutes and barred the employer from defending the claim based on causation issues. The legislature ultimately worked around this decision by enacting Connecticut General Statutes Section 7-433c; this was NOT a workers' compensation statute but rather an outright bonus to police and firefighters. While benefits under Section 7-433c are paid through the Workers' Compensation Commission they are taxable since they are not considered a workers' compensation benefit.

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