



2020 LEGISLATIVE REPORT

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This year's legislative session convened on February 5, 2020, and by all initial appearances, the usual stakeholders began assembling documents and proposals for consideration by our elected representatives. As the work began, however, most participants had an awareness and some concern relative to a virus which, of course, became a pandemic like that never seen before. The legislative session was suspended March 12, 2020. Other than a special session July 21, 2020 through July 27, 2020 addressing absentee voting, police accountability, extension of a telehealth order, and the capping of the cost of insulin, no further legislative action was taken. The Governor, however, pursuant to Section 28-9(b)(1) and Section 19a-131a, issued a declaration of public health and civil preparedness emergency resulting in a string of executive orders. Workers' Compensation Commission Chairman was charged with the implementation of certain tasks pursuant to those orders. What follows is an outline of the legislature's activity prior to its suspension, the executive orders and steps taken by the Chairman, and a summary of the current executive orders set to expire per statute on September 9, 2020, which now have been extended to February 9, 2021.

Pending Bills at the Time of Suspension

1. **SENATE BILL 231 "An Act Concerning Workers' Compensation Benefits for Certain Mental or Emotional Impairments Suffered by Emergency Medical Services Personnel, Department of Correction Employees, and Dispatchers."** Practitioners will recollect that Public Act 19-17 expanded the remedies for post-

traumatic stress disorder amending Section 31-275 to allow police officers, municipal constables, parole officers, and firefighters, both paid and volunteer, to pursue additional limited workers' compensation benefits. The Public Act provided 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. Subsequent to hearings, the Committee voted favorably to add emergency medical services personnel, Department of Correction employees, and dispatchers. The bill, of course, was never voted on by the legislature, but is likely to be revisited once the next regular legislative session is convened.

2. **SENATE BILL 351 "An Act Concerning Minor and Technical Changes to the Workers' Compensation Act"** was also favorably reported out of the Labor and Public Employees Committee. This snake bitten legislation was that proposed by the Chairman and the Executive Committee of the Workers' Compensation Section of the Connecticut Bar Association. Once again, there was no opposition to the bill and assuming no further unforeseen circumstances, this legislation should receive approval in the next session.
3. **SENATE BILL 352 "An Act Concerning Permanent Partial Disability and Pension Offsets"** would repeal Section 7-450c of the General Statutes and substitute additional language which would prohibit taking any action by special act charter or local rule to diminish or eliminate any pension or retirement benefit due to an individual's entitlement to permanent partial disability benefits under Section 31-308 or 31-308a of the Workers' Compensation Act. The bill did provide that nothing therein should be construed to interfere with the provisions of an established collective bargaining agreement. Again, it is anticipated that this bill will be revisited in the next session.
4. **HOUSE BILL 5268 "An Act Concerning Workers' Compensation"** was to be the vehicle employed for any necessary changes to the Act following the valuation by the task force established by last year's **SPECIAL ACT 19-10 "An Act Expanding Remedies and Potential Liability for unreasonable, contested, or delayed workers' compensation claims."** The practitioner will remember that the legislation established a task force of various stakeholders and legislators who were to:
 - A. Identify the extent of unreasonable, contested, or delayed workers' compensation claims.
 - B. Study methods to expand remedies regarding potential liability for unreasonable, contested, or delayed workers' compensation claims.
 - C. Clarify the law regarding bad faith handling of workers' compensation claims.

The task force study was to include, but not be limited to, an examination of:

- A. How such claims are handled when an injured worker is covered by employee benefit health insurance.
- B. Whether an employee benefit plan should make payments during the time period the Workers' Compensation Commission takes to determine whether the worker's injury is work-related.
- C. How claims are handled when an injured worker's employer does not provide an employee benefit health insurance plan.
- D. The Workers' Compensation Commissioner's authority to fine an insurance company for unreasonably contested claims or undue delay, particularly when such undue delay may cause permanent injury to an employee.
- E. Delays caused by the failure of medical professionals to follow the Professional Guide for Attorneys, Physicians, and Other Health Care Practitioners guidelines of cooperation or to provide respondents with a complete and accurate medical history including, but not limited to, all relevant medical records requested.
- F. Whether benefits are paid to injured workers or on behalf of injured workers without prejudice during a period of contest and the frequency with which:
 - 1. Said benefits are reimbursed in cases in which the underlying injury is deemed not compensable.
 - 2. The treatment paid for without prejudice is deemed unreasonable or unnecessary.
 - 3. Indemnity was paid during a period of time in which the injured worker is deemed to have been capable of working or work was available.
- G. Remedies on an undue delay in payment causes unnecessarily long delays in medical treatment resulting in loss of employment.
- H. Types of systems that may be created to obtain data regarding reasonable treatment and recovery timeframes.

- I. Best methods to prevent unfair claims handling practices that violate the Connecticut Unfair Insurance Practices Act as amended from time to time including, but not limited to, the following:
 1. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue.
 2. Failing to acknowledge and act with reasonable promptness upon communications with respect to claims arising out of and in the course of employment under insurance policies and third-party administration contracts.
 3. Failing to adopt and implement reasonable standards for prompt investigation of claims arising out of and in the course of employment to which such insurance policies and third-party administration contracts to respond.
 4. Refusing to pay benefits without conducting a reasonable or timely investigation based on all available information.
 5. Failing to affirm or deny coverage of benefits within a reasonable time after submission of a request for such benefits has been submitted.
 6. Not attempting in good faith to effectuate prompt, fair, and equitable provision of benefits for claims in which liability has become reasonably clear.
 7. Attempting to settle claims on the basis of an application that was altered without notice or knowledge or consent of the insured.
 8. Making known to beneficiaries of such insurance policies or third-party contracts of administration pursuant to this section of policy of appealing from decisions of the Workers' Compensation Commissioner or Administrative Law Judge in favor of such beneficiaries for the purpose of compelling the acceptance of settlements or compromises in an amount less than the amount awarded in decisions.
 9. Delaying the investigation or payment of claims by requiring a beneficiary or healthcare provider to submit a preliminary claim report and then requiring a subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

10. Failing to promptly provide a reasonable written explanation for the denial of a claim or for the offer of a compromise in settlement in relation to the facts or applicable law.

The task force as described in the Special Act was to be appointed by August 1, 2019, and to submit its report not later than January 1, 2020. Needless to say, the task force had a full plate of issues to explore. The task force did not begin hearings until January 2020. Representative Susan Johnson chaired the committee in the hearings, which did receive extensive comment and discussion from a variety of stakeholders including claimants, practitioners, physicians¹, the Connecticut Trial Lawyers Association, and the Insurance Association of Connecticut.

I cannot in this space do justice to the testimony and evidence submitted to the task force. As you might anticipate, the claimants' bar and the respondents' bar presented different perspectives. Examples of delay were responded to with either illustrations of additional circumstances or an attempt to point out the vast amount of information and decision making accomplished on a daily basis within our system.

Suggestions to improve the flow of benefits included mandatory penalties, increasing the commissioners' authority over utilization review, enforceable scheduling orders, enforceable agreements at informal hearing (See, Section 31-297a), and encouraging physicians to re-bill their charges at workers' compensation rates. Proponents of stricter scrutiny also suggested amending Section 31-284(a) so as not to prohibit civil actions against an insurer, TPA, or self-insured employer for breach of the covenant of good faith and fair dealing. (A further attempt to set aside DeOliveira v. Liberty Mutual Insurance Company, 273 Conn. 487 (2005).)

Extensive discussion focused on numerous examples of perceived or actual delay with a focus many times on whether there was an actual need to take legislative action or perhaps have commissioners more closely evaluate the facts of a particular situation and employ the existing sections of the Workers' Compensation Act that might serve as a remedy for the situation presented. The balance between changes and amendments to the Act that would require additional forms and proceedings and therefore the expenditure of additional resources led ultimately to what appeared to be a recognition that overall the Connecticut workers' compensation system functions rather well and employs its resources in an effective manner.

The extensive discussion resulted in a preliminary suggestion to amend Section 31-296 so that a Form 36 be filed in any case in which the respondents sought to discontinue

¹ Of interest was a suggestion by the physicians on the task force that a single fee schedule be established for diagnostic testing. They agreed that while blood work can be done anywhere, CT scans, MRIs and EMGs are operator and physician dependent. They supported allowing physicians to direct testing, avoiding delays caused by the scheduling of such testing elsewhere. This may be a topic revisited by the medical advisory panel.

prescription medications. Ultimately, that proposal was not pursued. Also proposed was an extension of the task force's effective dates.

A final report by the task force has not been prepared. I anticipate that Chairperson Johnson and the committee will seek to reconvene the task force and extend its life in the next legislative session.

Executive Orders Issued by the Governor

With the advent of the pandemic, our focus shifted from the legislative branch to the executive branch. Governor Lamont's authority to issue the executive orders which were initiated on March 10, 2020 has basis in Connecticut General Statutes Section 28-9(b)(1). The statute provides:

Following the Governor's proclamation of a civil preparedness emergency pursuant to section (a) of this section, or declaration of a public health emergency pursuant to Section 19a-131a, the governor may modify or suspend in whole or in part, by order as hereinafter provided, any statute, regulation or requirement or part thereof whenever the Governor finds such statute, regulation or required amount, or part thereof, is in conflict with the efficient and expeditious execution of civil preparedness functions or the protection of the public health.

Section 28-9(b)(1) also specifies that such executive orders not exceed six months unless sooner revoked. Any such order shall have the full force and effect of law upon filing the same with the Office of the Secretary of State. As this paper was being prepared, the Governor took the steps to extend his executive orders by declaring a second civil preparedness and/or public health emergency. Those circumstances that would support such a declaration will need be stated by the Governor and have not yet been reviewed. The assumption, however, is that the steps in place to control the spread of disease must continue in an effort to prevent or control a second wave of outbreaks.

My purpose here is to provide an overview of the executive orders that affect the substance of the Workers' Compensation Act and the workings of the Commission. The constitutionality of any such orders may well be the subject of discussion at some other point.²

On March 16, 2020, Chairman Morelli issued his initial **Temporary Emergency Guidelines** (Memorandum No. 2020-02) in response to COVID-19 outbreak to comply with

² For those interested in the authority behind, the workings of, and constitutional issues associated with the Governor's executive orders, I would recommend an excellent paper found online and authored by attorneys at Day Pitney, LLP, "Can He Do That? The Governor's Authority to Suspend or Modify Statutes in an Emergency Like the COVID-19 Pandemic," Christopher A. Klimmek, et al (2020).

the public health policy of social distancing. His manner of continuing informal hearings by way of conference call allowed the commission to continue to function and was welcomed by all stakeholders. There were certain concerns, however, with the inability to physically access the Workers' Compensation Commission. That concern, coupled with uncertainties as to the transfer of paper, and the lack of personnel at workers' compensation offices to process paper, mirrored a general concern with respect to legal proceedings throughout the state and resulted in Governor Lamont's **Executive Order No. 7K** on March 23, 2020 which at Section 2 suspended all time requirements, statutes of limitations, or other limitations or deadlines relating to Chapter 568. The order further suspended all time requirements or deadlines of the commission relating to the Act or other statutory programs or schemes over which the commission provided adjudication and went on to enumerate but not limit the order to all statutes relative to the administration of benefits or reporting requirements.

The outbreak of the COVID-19 virus created a great deal of discussion in the workers' compensation forum relative to the compensability of a communicable disease and in particular with respect to those employees who faced an increased risk due to exposures required by their work duties. Initially, the Governor advised that he had faith in the workers' compensation system's ability to address such claims given the case law and the commission's ability to prioritize hearings.

As claims began to develop, however, it became apparent that certain employees may have difficulty establishing claims through the traditional burden of proof associated with the occupational diseases. A number of stakeholders on behalf of employees raised issue with actions taken by other states which prioritized and lessened the burden of proof for those exposed to or contracting COVID-19. As a result, on July 24, 2020, the Governor issued **Executive Order No. 7JJJ**.

As a preamble to that order, the Governor stated the purpose of the Workers' Compensation Act was to provide benefits for those injured due to a work-related illness and recognized that an occupational disease must ordinarily be peculiar to and distinctly associated with the occupation in which the employee was engaged, but noted that the COVID-19 pandemic had resulted in a hazard in excess of the general hazards of employment for a list of enumerated employees.

The Governor therefore sought to establish a timely, "straightforward opportunity" to claim benefits. He noted that after May 20, 2020, COVID-19 rates had declined, testing had increased, as had tracing capacity. He added that personal protective equipment made possible limited relaxation of restrictions and that rules were in place for expanded economic and recreational activity.

The Governor therefore created a rebuttable presumption of eligibility for workers' compensation benefits for those employees who missed a day of work between March 10, 2020 and May 20, 2020 due to a diagnosis of COVID-19.

The rebuttable presumption would be in place for those employees provided:

1. Such employee worked, at the direction of the employer, outside the home during at least one of the 14 days immediately preceding the date of injury and had not received an offer or directive from said employer to work from home instead of his or her place of employment.
2. If the date of injury was more than 14 days after March 23, 2020, such employee was employed by an employer deemed essential by the Department of Economic and Community Development pursuant to Executive Order No. 7H.
3. The contraction of COVID-19 must have been confirmed by a positive laboratory test within three weeks of the date of injury or diagnosed and documented within three weeks of the date of injury by a licensed physician, physician's assistant, or APRN on the basis of symptoms.
4. A copy of the positive laboratory diagnostic test was to be provided to the employer or its insurer.

The order provided that the presumption may be rebutted only if the employer or insurer demonstrates to a commissioner by a preponderance of the evidence that the employment of the individual was not the cause of the COVID-19 in question.

The order defined the date of injury for an employee who has contracted COVID-19 as that date between March 10, 2020 and May 20, 2020 that the employee was first unable to work or died due to the virus.

The executive order did provide that any temporary total or temporary partial disability shall be reduced by the amount of any paid sick leave available to the employee through the Emergency Paid Sick Leave Act set forth in the federal Families First Coronavirus Response Act or for any other paid sick leave program specifically available in response to COVID-19. The offset therefore was not to include any accrued paid time off regularly available to the employee.

As of August 1, 2020, the order charged the Workers' Compensation Commission to produce a monthly report for the Governor identifying the number of COVID-19 and non-COVID-19 cases filed, the percent of such claims litigated, and an average timeline from date of filing to ruling in a COVID-19 claim. The report is also to detail the number of COVID-19 claims appealed to the CRB. Finally, to the extent possible, the commission is to provide information about the percent of non-litigated COVID-19 workers' compensation claims filed by hospital, municipal, and other employees that are record only claims and which were acknowledged or denied by the employer or its insurer and are being paid, including those paid without prejudice.

Employers and insurers were directed to comply with any requests of the commission for information needed to prepare such reports. The executive order clarified that those who do not qualify for the rebuttable presumption are still able to pursue the claim in the traditional manner under Chapter 568.

As noted, the executive order referenced those employees deemed essential pursuant to Executive Order No. 7H that are contained in a detailed expansive list of 16 critical infrastructure sectors defined by the Department of Homeland Security and was not limited to healthcare workers or first responders, but included for example warehouse workers, utilities workers, food processing, grocery stores, big box stores, and a variety of services from banks and insurance companies to pest control and landscaping.

The list of employees in Executive Order No. 7H is also subject to review and amendment as to what business may be deemed essential by requesting an opinion from the Department of Economic and Community Development. The rebuttable presumption therefore can well apply to a large number of employees.

The Governor's executive order also took the interesting step of expanding Section 31-290(a) with respect to wrongful termination or discrimination for exercising one's rights under the Workers' Compensation Act. The amendment 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." This provision will affect not only COVID-19 claims, but all other claims under our Act. Arguably, for this provision to be effective, one must view it within general public health concerns articulated in the Governor's executive orders. Perhaps the provision best is viewed as ensuring that those in need of treatment receive it.

As of this writing, the pandemic continues although thankfully at a much, much lower incidence rate in our state. I am sure the commission will continue to communicate all changes and updates through its website as it has done to date.

One final note, Commissioner Scott Barton was to receive his reappointment this past session. The legislature has suspended actions relative to reappointment of judges and commissioners and will likely revisit and confirm his reappointment in the next session.

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State of Connecticut
Workers' Compensation Commission
Stephen M. Morelli, Chairman

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TEMPORARY EMERGENCY GUIDELINES IN RESPONSE TO COVID-19 OUTBREAK

MEMORANDUM NO. 2020-02

TO: WCC Commissioners, District Administrators, Claimants, Self-Insureds, Insurance Carriers, Attorneys, Unions, and Advisory Board Members

FROM: Stephen M. Morelli, Chairman

DATE: March 16, 2020

RE: **TEMPORARY EMERGENCY GUIDELINES IN RESPONSE TO COVID-19 OUTBREAK**

In an effort to comply with the COVID-19 public health policy of social distancing, the Workers' Compensation Commission will be instituting changes in the hearing process for the foreseeable future. Therefore, beginning today, March 16, 2020, we are directing the following **initial changes**:

1. CANCELLATION OF DOCKETS FOR TUESDAY, MARCH 17, 2020 & WEDNESDAY, MARCH 18, 2020.

Beginning today Monday, March 16, 2020 district offices are directed to contact all parties on the dockets for Tuesday, March 17, 2020 and Wednesday, March 18, 2020 to notify them that hearings are postponed. (*Should any parties to any hearing appear in person, the commissioners shall use their discretion on how to proceed*).

Any postponed cases which are deemed to be emergencies by the commissioners shall be scheduled for Thursday, March 19, 2020 or the morning of Friday, March 20, 2020.

THE PURPOSE of these hearing postponements is to: (i) allow time for commissioners to go through the currently docketed hearings in order to determine which of those hearings need to go forward and which may reasonably be deferred; and (ii) allow WCC time, together with IT, to work out the logistics of proceeding with telephonic informal and pre-formal hearings. (We are advised by IT that the district phone systems may not be adequately equipped for the volume of conference calls we anticipate.)

2. EXPECTATIONS MOVING FORWARD

While WCC will make all efforts to conduct hearings by telephone, this obviously is less than ideal and has limitations. Although we will attempt to conduct as many telephone hearings as possible, we cannot

docket as many cases as we would do in a normal docket. Therefore, to reduce the volume of hearings WCC is taking these steps:

Effective immediately, the three-day rule for cancellation of hearings is suspended.

"Reports" may be made by phone, up to the time of the hearing.

Continuances for cause will be liberally granted, with due consideration of prejudice to affected parties.

Subject to commissioner discretion, out-of-state stipulation procedures may be used for in-state claimants.

Until further notice, there shall be no double docketing going forward in any time slots.

Commissioners and staff are expected to prioritize the scheduling of hearings to ensure that those hearings of the highest priority are docketed. Priority hearings shall include, BUT NOT BE LIMITED TO, hearings where benefits are not being paid (including those where a Form 43 has been filed denying compensability), medical treatment is being denied and is deemed urgent, Form 36 hearings, and hearings resulting from the receipt of Commissioners' Examinations if the parties indicate the CME did not resolve the issue.

3. EXPECTATION OF THE PARTIES

The obligation of a party requesting a hearing to first speak with the opposing party will be strictly enforced. The purpose of this is to determine if the issue can be resolved or, if not, whether a hearing *at this time* is truly necessary.

As a guide, when deciding if a hearing needs to go forward, ask yourself if the issue is sufficiently important that you would risk exposure of yourself or your family by appearing in person.

If for the purposes of the hearing, written records or reports are going to be relied upon, those documents should be provided by fax to the district in advance of the hearing. *Parties should only send those documents that are essential and relevant to the issue in dispute.*

Job searches are waived from Monday, March 16, 2020, until further notice.

4. HEARINGS BY TELEPHONE EFFECTIVE THURSDAY, MARCH 19, 2020

Beginning Thursday, March 19, 2020, WC hearings will be done by telephone unless determined otherwise by the commissioner. This policy shall remain in place until further notice. Conference calls shall be initiated by staff and/or commissioners at the noticed hearing times.

Given system limitations, to the extent parties can initiate conference calls themselves it would be helpful and appreciated. If at the time of the hearing WCC has not received a call, commissioners will initiate the call.

(Should any parties to any hearing appear in person, the commissioners shall use their discretion on how to proceed. A suggestion would be, when thought necessary, to have the parties directed to a conference room where they can then be conferenced into the hearing room telephonically.)


5. SCHEDULING OF HEARINGS

Unless directed otherwise by commissioners, no apportionment hearings (unless the 299b party is refusing to pay benefits) shall be scheduled until further notice. For the 8th District Commissioner

Schoolcraft will direct staff as to scheduling of asbestos hearings.

6. FORMAL HEARINGS

Only formal hearings of high priority should be scheduled until further notice. Formal hearings WILL NOT be done telephonically unless specifically directed by a commissioner. Commissioners will work with staff to determine which formal hearings are priority hearings.

 State of Connecticut Workers' Compensation Commission Stephen M. Morelli, Chairman						
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