



2021 LEGISLATIVE REPORT

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The 2021 legislative session came to a close July 9, 2021 with a flurry of activity related to the Workers' Compensation Act in the closing days and then again during the special session that addressed the implementer bill. As a result, there are a number of new public acts which the practitioner will certainly want to review whether representing the claimant or a respondent.

PUBLIC ACT 21-107 (SENATE BILL 660) "An Act Expanding Workers' Compensation Benefits for Certain Mental or Emotional Impairments Suffered by Health Care Providers in Connecticut with COVID-19" was effective upon passage June 30, 2021. The new law redefines post-traumatic stress disorder as post-traumatic stress injury, notwithstanding that the diagnosis must still meet the criteria for PTSD as specified in the most recent addition of the "Diagnostic and Statistical Manual for Mental Disorders."

Despite the title of the new law, the now "eligible individuals" qualifying for coverage for an event on or after July 1, 2019 has been expanded beyond police officer, parole officer or firefighter to include emergency medical services personnel, Department of Correction employees and telecommunicators. Health care providers join the eligible group when encountering a qualifying event on or after March 10, 2020.

The new law primarily addresses Subsection 16 of Section 31-275 and rewrites Section 31-294k. The workings of and the benefits available pursuant to Section 31-294k remain the same. In the case of a telecommunicator, however, the term "witnesses" will mean that the dispatcher hears by telephone or radio while directly responding to an emergency call that

which constitutes a qualifying event under the established law and while providing a dispatch assignment.

Health care providers as defined means:

(A) a person employed at a doctor's office, hospital, health care center, clinic, medical school, local health department or agency, nursing facility, retirement facility, nursing home, group home, home health care provider, any facility that performs laboratory or medical testing, pharmacy or any similar institution, or (B) a person employed to provide personal care assistance as defined in Section 17b-706 in or about a private dwelling provided such person is regularly employed by the owner or occupier of the dwelling for more than twenty-six hours per week.

The Act also references that a health care provider must be engaged in activity substantially dedicated to mitigating or responding to the public health and civil preparedness emergencies declared by the Governor on March 10, 2020 or any extension thereof.

As such, the health care provider will qualify for benefits in the event he or she:

- (i) Witnesses the death of a person due to COVID-19 or due to symptoms that were later diagnosed as COVID-19;
- (ii) Witnesses an injury to a person who subsequently dies as a result of COVID-19 or due to symptoms that were later diagnosed as COVID-19;
- (iii) Has physical contact with and treats or provides care for a person who subsequently dies as a result of COVID-19 or due to symptoms that were later diagnosed as COVID-19; or
- (iv) Witnesses a traumatic physical injury that results in the loss of a vital body function of a person due to COVID-19 or due to symptoms that were later diagnosed as COVID-19.

As noted above, the indemnity provisions of Section 31-294k remain the same to the extent that there is a 52 week cap on benefits and a bar to awarding benefits beyond four years after the qualifying event. The practitioner will also recollect that this section prohibits payment of benefits pursuant to Section 31-308(b) and Section 31-308(a).

PUBLIC ACT 21-18 "An Act Concerning Minor and Technical Changes to the Workers' Compensation Act." (SENATE BILL 907) was the joint bill submitted by the Chairman and the Executive Committee's Legislative Subcommittee as guided by Attorney Bud Drapeau. The Public Act has been signed by the Governor and is effective October 1, 2021.

Section 1 substitutes the term “administrative law judge” for any reference to the commissioners not only in the current statute but with respect to all pending legislation.

Section 2 amends Section 31-280a(c) by reducing the number of meetings of the Advisory Board to once each calendar quarter (rather than twice).

Section 3 repeals Section 31-283f regarding the Statistical Division and substitutes language which eliminates the full-time salaried director appointed by the Chairman to administer the division.

Section 4, the final request of the Chairman’s office, substitutes new language to Section 31-298 eliminating the term “cassettes” relative to the release of audio recordings.

Section 5 begins those changes suggested by the Legislative Sub-Committee of the Executive Committee (except as noted below). Section 31-349 is subject of substantive language which eliminates references to transfer of liability and the notice provisions, making for a much shorter statute. The law continues to reference that the amount of disability paid is less any compensation payable or paid with respect to the previous disability. The existing language defining that which is payable or paid remains.

Section 6 and Section 7 make technical changes to conform Sections 31-354 and 31-355 by eliminating references to 31-349(f) and Section 31-349(c) transfer references.

Section 8 of the new law repeals three obsolete provisions eliminating (at the Chairman’s request) Section 31-276a which transferred the Workers’ Compensation Commission to the Labor Department for administrative purposes only. Section 31-298, the medical panel provision which per the historians in our section, has not been used since the 1980s is eliminated. The anachronistic 31-304 allowing Superior Court judges to destroy VAs filed with the Clerk of Superior Court greater than ten years in age is also eliminated. That particular procedure was associated with appeals prior to the establishment of the Compensation Review Division.

SPECIAL ACT 21-35 "An Act Establishing a Task Force to Study Cancer Relief Benefits for Firefighters" was effective on passage July 12, 2021. The new law results from a modification of an earlier pending bill at the legislature that sought to establish presumptions for cancers contracted by firefighters. The new law will establish a task force to study cancer relief benefits for firefighters. This study is to include, but is not limited to, an examination of the adequacy of the cancer relief program established pursuant to Section 7-313j and the feasibility and implications of providing workers' compensation and other benefits including death benefits to firefighters who are diagnosed with cancer acquired as a result of occupational exposure to noxious fumes and poisonous gases. Among the members of the task force will be an individual with expertise in the state's workers' compensation program, one with expertise in cancer research, as well as a representative of the Firefighters Labor Organization. Both municipal paid and volunteer fire departments will be represented by a member as well. The twelve member task force

is to report its findings and recommendations to the Labor Committee not later than January 1, 2022, at which time the task force will terminate.

As has been noted at the time of prior reports and presentations, the legislative session is truly not over until the budget implementer is reviewed and passed in both chambers. This year's implementer, **SSPA21-2 (Senate Bill 1202)** added a number of changes to the Act by way of a simple exercise of power by the Democratic majority which sought to preserve proposed changes that it may have viewed as lost by Republican efforts to delay or filibuster. As a result, vestiges of House Bill 6478 appeared in the special session's implementer. At Section 290, effective upon passage June 15, 2021, Section 31-290a is expanded to prohibit employers from discharging or disciplining an employee for exercising his or her rights under the Act. The amendment to 31-290a will also provide relief in the event an employer deliberately misinforms or deliberately dissuades an employee from filing a workers' compensation claim for benefits or, on or after October 1, 2021, a claim for payment of benefits from the Connecticut Essential Workers' COVID-19 Assistance Fund. (See herein.)

Section 291 of the special session law substitutes new language in Section 31-306 as of June 15, 2021 increasing the amount to be paid for burial expenses to \$12,000.00 for an employee that dies on or after the effective date of the law. Thereafter, on January 1, 2022 and each January thereafter the compensation for burial benefits will be adjusted by the percentage increase in the consumer price index for urban wage earners and clerical workers in the northeast as defined in the United States Department of Labor's Bureau of Labor Statistics.

Practitioners will remember that House Bill 6478 had proposed an increase to \$20,000.00 in addition to the adjustment under the consumer price index. The Workers' Compensation Executive Committee had expressed support for the sum of \$7,500.00. Whether the \$12,000.00 figure was ever the subject of public hearing discussion will need to be reviewed.

SECTION 289 of **SSPA21-2** establishes the "**Essential Workers COVID-19 Assistance Program.**" The program becomes effective October 1, 2021. The program, which this writer believes is funded by federal monies from the American Recovery Act, will provide benefits on a first-come, first-served basis through June 30, 2024. The program will provide benefits to essential workers for lost wages, out-of-pocket medical expenses and/or burial expenses. Compensation is provided without the need to prove that the illness arose from employment.

Under the new law, an "affected person" who is an "essential employee" will qualify for relief if he or she died or could not work due to contracting COVID-19 or symptoms later diagnosed as COVID-19 between March 10, 2020 and July 20, 2021.

Applying for benefits requires proof by way of a positive laboratory test or a diagnosis documented by a licensed physician, physician's assistant or APRN. During the 14 consecutive days immediately before death or inability to work, the applicant must not

have worked solely from home with no physical interaction with other employees or have received an individualized written offer or directive to work solely from home. "Affected person" does not include federal employees who qualify for benefits under the COVID-19 presumptions included in the American Rescue Plan of 2021. Essential employees able to apply for relief from the program are those employed in a category that the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices as of February 20, 2021 recommended to receive a COVID-19 vaccination in phase 1a or 1b of the program. The legislative commissioner's office noted that these individuals would include health care personnel, firefighters, police officers, corrections officer, food and agricultural workers, manufacturing workers, grocery store workers, public transit workers, education sector workers and child care workers.

The program's administrator is to be the Office of the Comptroller or a third party administrator yet to be appointed. The bill authorizes the administrator to establish the program and provides a manner in which to consider evidence that does not require strict rules but rather representations under oath. The administrator has a number of obligations that include controlling administrative costs not to exceed 5% and as of January 1, 2022, to submit monthly reports. The practitioner who seeks to assist an applicant to this program should review procedures outlined within the new special act.

The program will provide weekly benefits for all uncompensated leave calculated at 75% of the claimant's net average weekly earnings but not to exceed the average weekly earnings of all workers in the state. The earnings relevant for purposes of calculating the average weekly wage are those earned in the 8 weeks immediately preceding the date unable to work. The program will provide a \$3,000.00 burial expense.

Of note is that a pending workers' compensation claim will not prevent the administrator from approving the person's claim for benefits. Any subsequent workers' compensation benefits, however, will be offset by the assistance received from the program. The administrator is to notify the Workers' Compensation Commission of any available offsets.

An affected person who seeks to have his or her application reconsidered can file an appeal with said review being conducted by the administrator's designee who will conduct a de novo review and from which there is no further appeal. On balance, this program provides an alternative to workers who contracted COVID-19 who may have difficulty proving their case by more traditional methods under the Workers' Compensation Act.

Practitioners who are reviewing the legislative website should also be aware that **PUBLIC ACT 21-110 is entitled "An Act Concerning the Office of the Correction Ombuds, the Use of Isolated Confinement, Seclusion and Restraints, Social Contacts for Incarcerated Persons and Training and Workers' Compensation Benefits for Correction."** This public act is the former Senate Bill 1059 which contained a provision to include Department of Corrections employees as protected workers for purposes of post-traumatic stress injury. With the passing of Senate Bill 660, however, that language was stricken. The assumption is that the title of the Act may be corrected before the final legislative record is created.

PUBLIC ACT 21-157 "An Act Concerning the Insurance Department's Recommendations Regarding the General Statutes" contains a provision that eliminates the Insurance Commissioner's requirement to submit reports to the Joint Standing Committee of the General Assembly relative to Section 31-290d. In addition to workers' compensation fraud claims, the commissioner need no longer provide reports relative to health insurance fraud or fires by arson.

Please note that Commissioner Barton's reappointment was confirmed and congratulations to him are in order. As all are aware, Chairman Morelli reinstated all timelines and filing requirements as of June 2, 2021. In person hearings recommenced effective July 1, 2021.

On a final note, please be aware that the implementer also contains a provision that instructs the Governor to establish the second week of February each year as "Kindness Week" so as to promote special acts of kindness. The Governor will be required to formulate suitable exercises to be held in the state capitol or elsewhere in recognition and observance of the week so as to promote it with residents of the state. Given some of the acrimony caused during this year's special session over the implementer bill, I remain hopeful that the legislators will recognize the second week of February as well.

As always, the status and the full text of proposed legislation and the new public acts can be viewed on the General Assembly website, cga.ct.gov.

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