
OLR Bill Analysis

sHB 6478

AN ACT CONCERNING WORKERS' COMPENSATION.

SUMMARY

This bill makes several changes in the workers' compensation laws. It creates a rebuttable presumption that employees who were unable to work due to contracting COVID-19 and meet certain other criteria (e.g., did not work solely from home during the previous 14 days) contracted it as an occupational disease arising out of and in the course of employment (thus, making them eligible for workers' compensation benefits).

To rebut the presumption, the bill requires that employers demonstrate by a preponderance of evidence that the employee's employment did not directly cause his or her COVID-19. In effect, this shifts the burden of proof in the case from the employee to the employer. If the employer successfully rebuts the presumption, the employee's claim must still be decided on its merits, but the employee must prove that he or she contracted the disease in the course of employment (as under current law).

The bill also:

1. requires the Workers' Compensation Commission to submit monthly reports with various data on COVID-19 claims;
2. creates a \$20,000 workers' compensation burial benefit for employees who die due to contracting COVID-19 in the course of employment and increases the current burial benefit from \$4,000 to \$20,000;
3. increases the maximum duration of additional partial permanent disability benefits that a compensation commissioner may order;

4. prohibits employers from (a) disciplining employees for filing a workers' compensation claim or (b) deliberately misinforming or dissuading them from filing a claim (which codifies Executive Order 7JJJ (2020)); and
5. requires employers or insurers to file a notice of controversy when they dispute a request for medical or nursing services.

EFFECTIVE DATE: Upon passage

§ 4 — COVID-19 REBUTTABLE PRESUMPTION

Presumption

For adjudicating workers' compensation claims, the bill requires that an employee who died or was unable to work due to contracting COVID-19, or having symptoms later diagnosed as COVID-19, is presumed to have contracted it as an occupational disease arising out of and in the course of employment (making them eligible for workers' compensation benefits) if:

1. the death or lost work occurred during (a) the current COVID-19 public health and civil preparedness emergencies or (b) new ones declared by the governor because of a COVID-19 outbreak in the state;
2. the contraction of COVID-19 is confirmed by a positive lab test or, if one is not available, diagnosed based on the employee's symptoms and documented by a licensed physician, physician assistant, or advanced practice registered nurse;
3. a copy of the test or diagnosis documentation is provided to the employer or insurer; and
4. the employee did not, during the 14 consecutive days immediately before the employee's death or inability to work, (a) work solely from home, with no physical interaction with other employees, or (b) receive an individualized written offer or directive to work solely from home, but otherwise chose to work at the employer's worksite.

The bill specifies that COVID-19 is an occupational disease for those diagnosed with it as described above. In effect, this gives them three years from the first manifestation of a symptom to file a workers' compensation claim (see CGS § 31-294c).

Employer Rebuttal

The bill allows employers or insurers to rebut the presumption if they clearly demonstrate by a preponderance of the evidence that the employee's employment did not directly cause his or her COVID-19. The employer or insurer must provide evidence to rebut the presumption within 10 days after filing a notice to contest the claim.

Under the bill, if the employer successfully rebuts the presumption, a compensation commissioner must still decide the employee's claim on its merits under the established practices of causation (i.e., the employee would have to prove that he or she contracted the disease in the course of employment). The bill additionally specifies that an employee who contracted COVID-19 but does not qualify for the presumption is not precluded from making a general workers' compensation claim.

The bill requires that an employee's pre-existing condition have no bearing on the merits of a claim, both for approving it and continuing benefits that have been awarded. It also specifies that the bill's reapportioning of the levels of the burden of proofs between the parties is a procedural change intended to apply to all existing and future COVID-19 claims.

Report

The bill requires the Workers' Compensation Commission, from July 1, 2021, to January 1, 2023, to provide monthly reports on COVID-19 claims to the Labor and Public Employees and Insurance committees. The reports must include the:

1. number of total COVID-19 workers' compensation claims filed since May 10, 2020;
2. number of record-only (i.e., uncontested) claims filed by

hospitals, nursing homes, municipalities, and other employers, listed by employer name;

3. number of COVID-19 workers' compensation cases filed by state employees in each agency;
4. number of these claims contested by each individual employer, including state agencies, third-party administrators, and insurers, by client;
5. reasons cited by each employer, including state agencies, third-party administrators, or insurers, by client, for contesting the claims;
6. number of claims that have had a hearing with the commission;
7. number of (a) commission rulings on appealed claims, (b) approved voluntary agreements, (c) findings and awards, (d) findings and dismissals, (e) petitions for review, and (f) stipulations;
8. average time it took to schedule an initial hearing after one was requested; and
9. average time it took to adjudicate contested COVID-19 workers' compensation claims.

The bill requires employers, including state agencies, third-party administrators, and insurers, to comply with all requests from the Workers' Compensation Commission for information it must include in the reports.

§ 5 — BURIAL EXPENSES

The bill establishes a \$20,000 workers' compensation benefit for burial expenses in any case in which the employee died due to contracting COVID-19 during the current COVID-19 public health and civil preparedness emergencies or new ones declared by the governor because of a COVID-19 outbreak in the state.

It also increases the current standard benefit for burial expenses from \$4,000 to \$20,000 once the bill passes. Then, starting on January 1, 2022, the bill requires the standard benefit to be annually adjusted by the previous calendar year's percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers in the Northeast.

§ 1 — ADDITIONAL PERMANENT PARTIAL DISABILITY BENEFITS

Existing law allows a workers' compensation commissioner to award additional benefits to a claimant who has exhausted his or her partial permanent disability (PPD) benefits. Current law limits the maximum duration of these additional benefits to the lesser of (1) the duration of the claimant's PPD benefits or (2) 520 weeks. The bill increases this limit to the lesser of (1) five times the duration of the claimant's PPD benefits or (2) 780 weeks. It also requires the commissioner to determine whether the disability is substantial enough to allow awarding the benefits past the original duration of the employee's PPD benefits.

By law and unchanged by the bill, these additional benefits are only available to employees (1) who are willing and able to work in Connecticut and (2) when the nature of their injury and its effect on their earning capacity warrants it.

§ 2 — EMPLOYER DISCIPLINE AND MISINFORMATION

Current law prohibits employers from discharging or discriminating against an employee because the employee filed a workers' compensation claim or exercised his or her rights under the workers' compensation law. The bill expands this protection to also prohibit employers from (1) disciplining employees for filing a claim or exercising their rights or (2) deliberately misinforming or dissuading them from filing a claim.

As under current law, employees subjected to a violation may either bring a lawsuit in Superior Court or file a complaint with the Workers' Compensation Commission.

§ 3 — NOTICE OF CONTROVERSY

The bill requires an employer or insurer to file a notice of controversy (presumably with a workers' compensation commissioner) when there is a dispute over whether a workers' compensation-related request for medical or surgical aid or hospital and nursing services, including mechanical aids and prescriptions, is reasonable or necessary. The employer or insurer must also send a copy of the notice to the originator of the request.

The bill allows a health care provider, employee, or other interested party to request a hearing about paying for the disputed medical and related services. It also specifies that (1) payment of the medical bill by an employer or insurer is not an admission of the reasonableness of subsequent medical bills and (2) it does not affect other workers' compensation provisions for notices of a claim for compensation or notices contesting liability.

BACKGROUND

Related Bills

sHB 6595 (§§ 1-4) and sSB 1002 (§§ 1-4), both favorably reported by the Labor and Public Employees Committee, contain provisions identical to §§ 2-5 of this bill.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 4 (03/25/2021)