March 11, 2021

RE: **HB 6595 – An Act Concerning Labor Matters Related to COVID-19, Personal Protective Equipment and Other Staffing Issues**

SB 1002 - An Act Concerning Labor Matters Related to COVID-19, Personal Protective Equipment and Other Staffing Issues

Dear Members of the Labor and Public Employees Committee:

I serve as General Counsel for the Insurance Association of Connecticut ("IAC"), a state-based trade association for Connecticut's insurance industry. Thank you for the opportunity to offer comment regarding HB 6595 – An Act Concerning Labor Matters Related to COVID-19, Personal Protective Equipment and Other Staffing Issues, as well as SB 1002 - An Act Concerning Labor Matters Related to COVID-19, Personal Protective Equipment and Other Staffing Issues.

Section 1.
While the IAC supports efforts aimed at discouraging and prohibiting discriminatory practices, the IAC opposes proposals outlined in Section 2 of HB 6478 because they are unnecessary and will likely have unintended consequences that will cause more harm than good.

Current law already prohibits employers from discharging or discriminating against any employee because the employee has filed a claim for workers' compensation benefits or otherwise exercised his or her rights under the Workers' Compensation Act ("Act"). Under C.G.S. 31-290a, an employee may file a civil claim in superior court or pursue a claim with the Workers' Compensation Commission ("WCC"). That employee may be awarded job reinstatement, payment of back wages, and any other employee benefits which the employee lost, as well as reasonable attorney's fees. This ensures that employees will be treated the same, regardless of whether they file a workers' compensation claim.

The IAC also opposes the proposal to allow a claimant to bring a claim when they allege to have been "deliberately misinformed or dissuaded from filing a claim for workers' compensation benefits" by their employer. It is not uncommon for employees to have questions regarding the claims filing process. In order to facilitate the filing of claims, communication between employers and employees should be encouraged. The IAC is concerned that this proposal will have the unintended consequence of discouraging employers from discussing the workers' compensation process with their employees for fear of being accused of wrongdoing. It will also likely lead to the filing of frivolous lawsuits, which will cause defense costs and settlements to increase. Such increases will be reflected in workers' compensation rates and as such, be costly for businesses.

Section 2.
The IAC strongly opposes the proposal in Section 3 to impose a new requirement on employers and insurers to file a "notice of controversy" when contesting the reasonableness of medical care, and to allow additional parties to request hearings.

Allowing additional parties to request hearings will cause an increase in hearings, which will delay the scheduling of hearings for claimants. As a result, it will take longer for issues to be adjudicated and for benefits to be paid to claimants. This proposal will be burdensome and costly for the parties to the claim, employers and insurers, and the WCC.

It is also important to note that medical care must be deemed reasonable and necessary to be covered under the Act. If medical care is an issue of contest, the Form 43 must be filed with the Commissioner and employee (or representative when applicable) to put all parties on notice. The Form 43 also states that it is to be filed with the medical provider. The Form 43 facilitates payment of medical care by a claimant's health insurance. Once a workers' compensation claim is filed, a provider may file a lien to ensure payment for covered medical services. As such, this proposal is unnecessary and problematic.

Section 3 (a)
The IAC recognizes the contribution that employees working during the COVID-19 pandemic have made to the community and are sympathetic to their cause; however, we caution this committee on creating a rebuttable presumption for any "employee who was unable to work at any time during the time period of the public health and civil preparedness emergency declared by the Governor" due to a diagnosis of COVID-19 or symptoms that were later diagnosed as COVID-19, because it is unnecessary and will cause claims unrelated to work to be accepted as work-related.

If enacted, HB 6478 will likely result in a significant increase in workers' compensation system costs. NCCI recently analyzed Section 4 of HB 6478 using three different hypothetical scenarios. It reported corresponding **increases in workers' compensation system costs ranging from $54 million to $378 million, which represents a 7%-47% increase**.

It is important to note that employees are entitled to workers' compensation benefits under the Act when they are able to demonstrate that their illness arose out of and in the course of their employment. A presumption is unnecessary because employees who contracted COVID-19 at the workplace are already eligible for benefits under current law.

Under HB 6478, employees diagnosed with COVID-19 will be presumed to have contracted it during the course of their employment, regardless of whether they had any exposure to COVID-19 during the course of their employment. Employers and insurers may become liable for indemnity and medical benefits throughout the claimant's life, without the claimant having to prove their illness was related to their employment. This is contrary to long-standing public policy that requires there be a causal connection.

Employees will be presumed to have contracted COVID-19 during the course of their employment regardless of exposure unrelated to work. An employee who frequented social events, violated the Governor Lamont's social distancing guidelines, traveled outside of the state, lived with someone who was diagnosed with COVID-19, and was never in contact with anyone who had COVID-19 during the course of their employment, will still

be presumed to have contracted COVID-19 at work. Employers will bear the expense associated with the defense of all claims and be responsible for payment of all benefits.

As COVID-19-related restrictions continue to be lifted and physical contact with others is becoming more common, it is less likely that contraction of COVID-19 will occur as a result of employment. As such, it is irresponsible to presume that every employee who worked during the declaration of public emergency necessarily contracted COVID-19 during their employment.

Section 3 (b)
The IAC opposes subsection (b), which extends the presumption to essentially all employees who worked at any time during the public health and civil preparedness emergency declared by the Governor because exclusions apply only to an employee "who, during the fourteen consecutive days immediately preceding the date of injury: (1) Was employed in a capacity where he or she worked solely from home and did not have physical interaction with other employees or work-related supplies or materials of the employer, or (2) was the recipient of an individualized written offer or directive from his or her employer to work solely from home, but otherwise chose to work at a work site of the employer".

This is problematic because it would cause employees who worked from home throughout the entire pandemic to be entitled to the presumption as long as they worked with a company laptop, cell phone, file or other work-related supply or material of their employer. Employees would also be entitled to the presumption in cases where their employer allowed or encouraged all employees to work from home, but failed to provide individualized written offers to each employee.

Section 3 (d)
The proposed requirement that an employer or insurer, within ten days of filing the notice of intention to contest employee's rights to compensation benefits (via Form 43), shall provide evidence to rebut the presumption is extremely unreasonable. This proposal would require employers/insurers to provide evidence to rebut the presumption, no later than 38 days after the filing of the claim (a Form 43 is required to be filed within 28 days of receiving a notice of claim).[1]

This is problematic because the collection of relevant medical records and investigation of a claim often takes longer than 38 days, due to no fault of the employer or insurer. For example, it is not uncommon for employees to fail to provide employers and/or insurers with a medical release form or with documentation this is necessary to process and/or investigate their claims by the 28th day. As such, insurers and employers should not be penalized.

Section 3 (f)
Self-insureds, third party administrators, and insurers have been collecting and submitting COVID-19 claims data to the WCC on a monthly basis since August of 2020. This data indicates that the WCC continues to be well-functioning, despite the pandemic. It also indicates that the majority of employees who have contracted COVID-19 as a result of their employment have been and continue to be compensated. Data collection is time

[1] By way of background, our Connecticut Supreme Court has held that an employer who fails to contest a workers' compensation claim in a timely manner (by filing a Form 43) or to begin paying benefits within 28 days of receiving a notice of claim may not, for the entire life of the claim, contest the compensability of the injured worker's injury or the extent of their disability. In other words, if an employer fails to file Form 43, it may suffer the direct and draconian consequence of having to pay workers' compensation benefits to a claimant throughout their entire life, without ever being able to challenge their claim.

consuming, burdensome and costly. Because there appears to be no need for additional collection, the IAC opposes continuing this reporting requirement through 2023.

Section 4.
The IAC opposes the proposed 400% increase in burial expenses and retroactive application to all deaths that occurred on or after October 1, 1988 (more than thirty years ago). Retroactive application is contrary to C.G.S. Sect. 55-3[2]. Also, because these additional costs were not contemplated in the premiums for policies during that period of time, passage of this bill could result in significant unfunded liabilities.[3]

Connecticut's current burial allowance is currently in line with burial allowances in the vast majority of states that range from $2,500 to $10,000. According to The National Funeral Directors Association, the average cost of a funeral in the U.S. is $7,360 (excluding cemetary plot), and the average cost of cremation is approximately $2,200.[4] Although burial has long been the traditional funeral choice for many years in Connecticut, the cremation rate is increasing and is now around 40% of all dispositions. Because the proposed 400% increase to twenty thousand dollars far exceeds the average cost of a funeral in the U.S., we believe it is unreasonable.

Sections 5 and 6.
The IAC recognizes the significant contribution that emergency medical services personnel, Department of Correction employees, telecommunicators, and health care providers make to the community and are highly sympathetic to their cause; however, we caution this committee on the expansion of coverage for mental disorders because they are multifaceted, of complex origin and highly subjective. As such, expansion will likely result in an increase of claims that are difficult to defend and costly to cover. The more broad the expansion of coverage, the more likely it is to threaten the affordability of workers' compensation insurance.

Mental health problems can affect any employee at any time, and the reasons they develop are varied. Genetics, adverse childhood experiences, and environmental stimuli may all be causes. The lack of scientific instruments to objectively evaluate these claims makes it difficult to distinguish a claim that is primarily work related from one that is not.[5] While objective tests, such as x-rays and MRIs are available to evaluate physical injuries, similar instruments are unavailable to evaluate mental or emotional claims.

In recognizing the issues associated with mental and emotional impairments, the Workers' Compensation Act Reforms of 1993 properly placed limitations on coverage to prevent the explosion of mental and emotional impairment claims and corresponding costs in Connecticut. Specifically, stress-related claims were limited to instances where the mental injury was caused by a physical injury or occupational disease.[6]

Since that time, Connecticut has made tremendous strides in improving the competitiveness of the workers' compensation market. For the past six consecutive years, workers' compensation insurance rates have steadily decreased, which is reflective of a decrease in the number of workplace injuries and claims filed.[7] This decline in claims and corresponding decline in premiums have helped business owners with one of their most significant operating expenses- workers' compensation insurance.

---

[2] No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have a retrospective effect.
[3] NCCI Preliminary Cost Impact Analysis HB 6478 Excluding COVID-19 Portion of Proposed Changes
[4] https://www.us-funerals.com/funeral-guide/connecticut/#.YEZJlpNKjGI
[5] https://journals.sagepub.com/doi/pdf/10.1177/216507999404201007
[6] https://www.cga.ct.gov/ps93/Act/pa/1993PA-00228-R00HB-07172-PA.htm
[7] https://portal.ct.gov/CID/News-Releases/Press-Releases/Press-Releases-20191030

Should this proposal advance, we would welcome the opportunity to work with the Labor Committee to ensure that legislation is properly limited and clearly defined, in order to accomplish its intended purpose without threatening the affordability of workers' compensation coverage.

Thank you for the opportunity to offer comment on HB 6595 and SB 1002.

Joy Avallone
General Counsel
Insurance Association of Connecticut