CONNECTICUT CONSTRUCTION INDUSTRIES ASSOCIATION, INC.

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Labor and Public Employees Committee
Public Hearing – March 11, 2021
Raised Bill No. 1002
An Act Concerning Labor Issues Related To COVID-19, Personal Protective Equipment And Other Staffing Matters
Raised Bill No. 6595
An Act Concerning Labor Issues Related To COVID-19, Personal Protective Equipment And Other Staffing Issues

OPPOSED TO SECTIONS 3, 7, AND 20-25

Dear Senator Kushner, Representative Porter, Senator Sampson, Representative Arora, and members of the Committee,

The Connecticut Construction Industries Association (CCIA) is an organization of associations that represent various sectors of the construction industry. Members include building and facility contractors; transportation contractors; environmental and utility contractors; material producers; suppliers; equipment dealers; and related professional firms. During the pandemic, our organization and our members have been steadfast in developing and implementing protocols to ensure the health and safety of our workers.

Section 3 of these bills sets forth "an employee who died or was unable to work as a result of contracting COVID-19…shall be presumed to have contracted COVID-19 as an occupational disease arising out of and in the course of employment…".

CCIA opposes Section 3 for the reason that this provision, creating a conclusive or rebuttable workers' compensation presumption that any employee who contracts COVID-19 did so in the course of employment will have a devastating impact on the state's economy in that:

- It will shift the cost burden of healthcare from the health insurance industry directly to already struggling Connecticut businesses.
- It will force businesses to incur the cost of workers' compensation claims where employees were not exposed to COVID-19 in the workplace.
- It will limit a claimants' care options to providers already approved in the workers' compensation system.

By creating this presumption, these bills would be putting construction employers in the untenable position of proving that their employees did not contract the virus at work. Identifying the source of contact is particularly difficult when the virus can be transferred by someone who is asymptomatic. The presumption would, in effect, require that all COVID-19 cases be covered by workers compensation when not all cases were contracted on the job. The cost impact of such a presumption on Connecticut's worker's

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compensation system could be staggering, even though many employees may have contracted COVID-19 outside of the workplace.

The Connecticut workers compensation system is judiciously structured and balanced to cover work-related injuries. Currently, throughout the construction industry, workers' claims of contracting COVID-19 at work are administered under the same statutory provisions as other occupational diseases. Enactment of this unrestricted presumption would disturb the well-established balance of the Connecticut's worker's compensation system. It would skew and bias the grand bargain between employers and employees that created a system that pays employees' indemnity and medical benefits for workplace injuries regardless of fault.

Most importantly is the impact of a COVID-19 presumption on construction employers' Employer Modification Rating (EMR), which is often an important determining factor in whether a construction company qualifies to bid on a project. We urge you to follow the direction of the National Council of Compensation Insurers (NCCI) which has recommended that COVID-19 claims be excluded from companies' experience rating.

CCIA opposes this blanket presumption for the reason that although the presumption may create a balanced policy for some industries, its application is unbalanced in the construction industry. The exposure level to COVID-19 for construction workers is very different than frontline healthcare workers or first responders. A construction crew performing site work in an open field has a much different exposure level to COVID-19 than a front-line essential employee working in a closed room.

This presumption is not in balance with the potential exposure. It will needlessly cost construction employers and the Connecticut Workers Compensation system, time, money and resources to adjudicate claims unnecessarily.

Section 7 of these bills requires employers to recall employees from layoff in order of seniority. It also requires employers to guarantee 30 days of work upon call back. CCIA opposes Section 7 because these provisions do not suit the construction industry for several primary reasons. First, call back and work guarantees are typically subjects of collective bargaining between the parties. Seniority has been bargained for in collective bargaining when it is suitable to the union and the type of work to be performed. Call back rules for other unions are collectively bargained to meet the needs of those individual union administration and members, as well as the employers' often-interim workforce requirements. This section throws those long-standing provisions establishing the terms and conditions of employment out of balance. Additionally, the law may be pre-empted by the Taft Hartley Act because it forces seniority and other conditions of employment on the bargaining parties who are governed by the federal law.

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Second, employment is often transitory, temporary, and multi-employer in nature in the construction industry. Workers are often hired and laid-off in short timeframes. The workforce is adjusted quickly to meet schedule requirements. Providing a ten-day grace period for workers to decide if they are returning to work is not practical. It will cause expensive delays on projects and instability between workers as the workforce is juggled to accommodate the ten-day provision. Moreover, this section of the bills will also stack project sites with unneeded employees as the thirty-day guarantee will keep the interim employees idle on the project far beyond any available work, when they could be productively employed by other employers.

Sections 20 through 25 of these bills provide for COVID-19 paid sick leave. CCIA opposes these sections because paid time off is a subject of collective bargaining in the construction industry. This requirement will throw the current well-settled, established, and negotiated collective bargaining agreements in the construction industry out of balance. Collectively bargained terms and conditions of employment have evolved over many years. Applying this provision to the construction industry could drive the bargaining parties back to the bargaining table to open agreements, upsetting longstanding provisions important to maintaining the continuity of the relationship between the parties.

Unfortunately, for the reasons set forth above, and other reasons, CCIA cannot support these measures. The employer-employee relationships in the Connecticut Workers Compensation system and construction industry have evolved over many years, during many policy debates, and over many collective bargaining cycles. These bills unbalance those finely tuned systems and agreements.

For more information, please do not hesitate to contact me at 860-529-6855 or dshubert@ctconstruction.org. Thank you for your consideration.