

# NUZZO & ROBERTS

## NEWSLETTER

May 2021

### **WORKERS' COMPENSATION UPDATE: FIRST QUARTER 2021**

In recent months, the courts and the Compensation Review Board have issued several important decisions regarding workers' compensation law.

### **COVID-19 UPDATES**

Pursuant to Workers' Compensation Commission Chairman, Stephen Morelli's, May 18, 2021 Order, starting on July 1, 2021, all hearings will be held in person.

Additionally, Governor Ned Lamont's May 20, 2021 Order (Section 2 of Executive Order 7K), which continued the suspension of non-critical Workers' Compensation Commission operations and associated requirements, will end on June 1, 2021. Therefore, starting on Wednesday June 2, 2021:

1. All statutory filing deadlines waived by Executive Order 7K shall begin anew effective June 2, 2021. For example, a 20-day deadline for payment of an award pursuant to Connecticut General Statutes §31-303 dated prior to June 2, 2021 must

commence on the 20th day following June 2, 2021.

2. Forms 36 received prior to the expiration of the Executive Order 7K will not be automatically approved. Any Forms 36 received on or after June 2, 2021 will be automatically approved if no objection is filed within 15 days.

3. Job searches will continue to be waived for all existing temporary partial benefits and/or Connecticut General Statutes §31-308a orders in effect on or before June 2, 2021. Effective June 2, 2021, the Commissioners, at their discretion, can require job searches when appropriate for temporary partial and/or Connecticut General Statutes §31-308a benefits. No benefits shall be terminated for lack of job searches on any temporary partial and/or Connecticut General Statutes §31-308a benefits already being paid as of June 2, 2021.

4. Effective June 2, 2021, all other WCC policies, procedures and deadlines return to the same as existed prior to March 16, 2020.

## SUPREME COURT AND APPELLATE COURT DECISIONS

### Governor Lamont's COVID-19 Pandemic Powers

In *Casey v. Lamont*, SC20494 (March 29, 2021), the owners of a pub, which was adversely impacted by Connecticut Governor Ned Lamont's Executive Orders issued during the COVID-19 pandemic, sued Governor Lamont seeking a declaratory judgment that the executive orders were in excess of Governor Lamont's statutory authority either because COVID-19 was not a "serious disaster" under Connecticut General Statutes §28-9(a) or because §28-9(a) was an unconstitutional delegation of legislative powers to the governor in violation of separation of powers.

The Supreme Court held that COVID-19 does constitute a "serious disaster" to trigger the Governor's authority to enact executive orders and that §28-9(a) itself is not unconstitutional. From a workers' compensation perspective, the Governor issued several executive orders which impacted the workers' compensation system. This case stands for the proposition the Governor has the power to make such orders, but the case does not address whether any of the individual orders are themselves valid and/or constitutional.

## REVIEW BOARD DECISIONS

### The Respondent has the Burden of Proof That Alcohol or Substance Abuse Caused a Workers' Compensation Injury

In *Reed v. Asbestos Management Company, L.L.C.*, 6370 CRB-6-20-1 (January 27, 2021), the trial commissioner dismissed the claim because Mr. Reed "suffered a syncope incident secondary to alcohol and substance abuse." However, an allegation of intoxication is an affirmative defense for which the respondent bears the burden of proof and the respondent must prove the intoxication was a substantial factor that caused the accident.

Usually, a submission into evidence of toxicology reports indicating the claimant was under the influence of drugs or alcohol is required. Although those reports are in evidence in this matter, there was no expert testimony addressing the levels in the claimant's system when he fell and if those substances caused the injury. There is also no eyewitness evidence the claimant consumed alcohol or narcotics during or before the work day.

Therefore, because the respondent did not provide sufficient evidence the claimant's injuries were the result of the fall at work and the claimant provided evidence he was injured at work, the Compensation Review Board reversed and remanded this matter to the trial commissioner.

## Is the Second Injury Fund Liable Because There is Sufficient Evidence the Employer was Self-Insured During the Claimant's Injurious Occupational Exposure to Asbestos?

In *Beers v. Raymark Industries*, 6347 CRB-8-19-9 (February 24, 2021), the Compensation Review Board affirmed the trial commissioner's conclusion the claimant was injuriously exposed to asbestos during his employment for Raymark Industries (formerly Raybestos) and the Second Injury Fund is the liable party because Raymark was self-insured for manufacturing employees and is no longer a viable company.

Specifically, Raymark Industries was self-insured for manufacturing employees during the claimant's employment from 1961 to 1969 but insured by The Hartford for salesmen and sales engineers. Although no policies for The Hartford could be located for the period from 1961 to 1969 to support the limitation of their coverage, The Hartford produced more than two dozen file folders for claims against Raymark during the relevant period. In each case, the employee was a manufacturing employee and Raymark paid benefits directly, rather than through an insurer.

Additionally, the testimony of Jean Bonzani from prior cases on the same issue was allowed into evidence. Ms. Bonzani, a former employee of the Workers' Compensation Commission, testified that all the workers' compensation claims for

the relevant period confirm the employer was self-insured.

Furthermore, in 1982, when Raybestos changed its name to Raymark Industries, they notified the Workers' Compensation Commission that as of December 31, 1982 they would no longer be self-insured.

In this matter, the claimant was ruled to be a manufacturing employee. However, as Raymark Industries has been dissolved, there was no insurer or employer to assign liability and the Second Injury Fund was ruled to be Connecticut General Statutes §31-299b responsible party.

## WHEN IN DOUBT, CALL US

We are only a phone call away. If you have any questions, call us!!

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