

## Connecticut Creates Rebuttable Presumption that COVID Infection was Work-Related for First Months of the Pandemic

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**Executive Summary:** On July 24, 2020, Connecticut Governor Ned Lamont signed his 63<sup>rd</sup> executive order in response to the public health emergency posed by COVID-19. Executive Order 7JJJ (“the Order”) creates a rebuttable presumption that certain workers who missed at least one (1) day of work between March 10, 2020 and May 20, 2020 and who were diagnosed with COVID-19 contracted the virus on the job.

Under the Order, the “date of injury” triggering benefits is the date between March 10, 2020 and May 20, 2020 on which: (1) the employee was first unable to work due to COVID-19; or (2) died due to COVID-19, whichever occurred first. For the rebuttable presumption to apply, the following criteria must be met:

- The employee was absent from work for one or more days between March 10, 2020 and May 20, 2020;
- Within three (3) weeks of the date of injury, the employee received a diagnosis of COVID-19 either by positive laboratory test or as documented by a physician, physician’s assistant or advanced practice registered nurse based on symptoms;
- The employee worked outside of his/her home on at least one of the fourteen days before the date of injury;
- The employer did not direct or offer the employee to work from home;
- If the date of injury was on or after April 7, 2020 (which is more than 14 days after Governor Lamont’s stay at home order went into effect on March 23, 2020), the employee was employed by an employer or in a job deemed essential by the Department of Economic and Community Development and, thus, exempted from the stay at home order; and
- A copy of the positive laboratory test or written diagnosis is provided to the employer or the employer’s insurer.

An employer or its insurer may rebut the presumption only by proving to the Workers’ Compensation Commissioner by a preponderance of the evidence that the employee’s employment was not the cause of the employee’s COVID-19 diagnosis. The Order does not detail what documentation or evidence will be necessary to meet this standard. Moreover, any wage replacement benefits awarded by the Commissioner under the Order will be reduced by any amount paid by the employer pursuant to the Emergency Paid Sick Leave provision of the Family First Coronavirus Response Act or any other paid sick leave program available specifically in response to COVID-19.

The Order also modifies the anti-retaliation provision contained in the Workers’ Compensation Act. In particular, it adds that an employer is prohibited from deliberately misinforming or otherwise dissuading an employee from filing a claim for benefits under the Order.

**Employer’s Bottom Line:** Under the Order, the Workers Compensation Commission must deem that all employees who first became ill or died from COVID-19 prior to April 7, 2020 contracted the illness while



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at work and, therefore, are entitled to benefits. For those first becoming ill or dying between April 7, 2020 and May 20, 2020, only essential workers who were required to attend work in person will be entitled to the presumption under the Order. Employers and insurers will have the opportunity to rebut this presumption before the Workers' Compensation Commission, but as a practical matter, that might prove difficult. Although the Order leaves open what evidence will be needed for the employer/insurer to meet its burden, any evidence that proves that the employee was not working on site in the 14 days prior to illness, or proof that someone in the employee's family contracted the virus first, might be sufficient. The Order makes clear that even those not entitled to the rebuttable presumption set out in the Order may still be otherwise entitled to benefits as would any other employee suffering a work-related illness under the standards set out by the Workers' Compensation Act. Employers should be prepared for a potential influx of workers' compensation claims for employees who became ill between March 10 and May 20, 2020. In the event that an employer receives a workers' compensation claim based on COVID-19 illness, the employer should review all its insurance coverage and provide notice and all relevant documentation to its carrier. Employers and/or insurers may also need to investigate claims to determine whether there is any evidence to support that the COVID-19 infection did not occur in the workplace.

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