STATE OF CONNECTICUT

BY HIS EXCELLENCY

NED LAMONT

EXECUTIVE ORDER NO. 7JJJ

PROTECTION OF PUBLIC HEALTH AND SAFETY DURING COVID-19 PANDEMIC AND RESPONSE – REBUTTABLE PRESUMPTION REGARDING WORKERS COMPENSATION BENEFITS RELATED TO CONTRACTION OF COVID-19

WHEREAS, on March 10, 2020, I issued a declaration of public health and civil preparedness emergencies, proclaiming a state of emergency throughout the State of Connecticut as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and Connecticut; and

WHEREAS, pursuant to such declaration, I have issued sixty-two (62) executive orders to suspend or modify statutes and to take other actions necessary to protect public health and safety and to mitigate the effects of the COVID-19 pandemic; and

WHEREAS, COVID-19 is a respiratory disease that spreads easily from person to person and may result in serious illness or death; and

WHEREAS, the World Health Organization has declared the COVID-19 outbreak a pandemic; and

WHEREAS, to reduce the spread of COVID-19, the United States Centers for Disease Control and Prevention (CDC) and the Connecticut Department of Public Health (DPH) recommend implementation of community mitigation strategies to slow transmission of COVID-19, including cancellation of gatherings of ten people or more and social distancing in smaller gatherings; and

WHEREAS, the risk of severe illness and death from COVID-19 is higher for individuals who are 60 or older and for those who have chronic health conditions; and

WHEREAS, public health experts have determined that it is possible to transmit COVID-19 even before a person shows symptoms and through aerosol transmission; and

WHEREAS, upon a proclamation that a public health or civil preparedness emergency exists, section 28-9(b) of the Connecticut General Statutes authorizes the modification or suspension in whole or in part by executive order of any statute or regulation or requirement or part thereof that conflicts with the efficient and expeditious execution of civil preparedness functions or the protection of public health; and

WHEREAS, the purpose of the Workers' Compensation Act codified in Chapter 568 of the Connecticut General Statutes is to provide benefits for employees who have been injured, died or become ill due to a work-related injury or illness; and

WHEREAS, occupational diseases must ordinarily be peculiar to and distinctively associated with the occupation in which the employee was engaged, but the COVID-19 pandemic has resulted in a hazard in excess of the general hazards of employment to the employees described herein; and

WHEREAS, health care professionals, grocery store clerks, first responders and other essential workers kept others safe and well throughout height of the COVID-19 pandemic, and it is essential to their health and the broader public health to ensure that they have a timely, straightforward opportunity to claim benefits they may be due through the workers compensation system; and

WHEREAS, after May 20, 2020, declining rates of COVID-19 infections and hospitalizations, combined with increases in both testing and tracing capacity and in the supply of personal protective equipment, made possible a limited relaxation of restrictions imposed to protect the public health along with the imposition of reasonable rules and safeguards for expanded economic and recreational activity;

NOW, THEREFORE, I, NED LAMONT, Governor of the State of Connecticut, by virtue of the authority vested in me by the Constitution and the laws of the State of Connecticut, do hereby **ORDER AND DIRECT:**

1. **Rebuttable Presumption of Eligibility for Workers Compensation.**
   (a) Notwithstanding Section 31-275(15) of the Connecticut General Statutes, there shall be a rebuttable presumption that an employee who initiates a claim for payment of benefits under the provisions of Chapter 568 of the Connecticut General Statutes, and who missed a day or more of work between March 10, 2020 and May 20, 2020, inclusive, due to a diagnosis of COVID-19, or due to symptoms that were diagnosed as COVID-19, contracted COVID-19 as an occupational disease arising out of and in the course of employment, provided:

      i. such employee worked, at the direction of the employer, outside the home during at least one of the fourteen days immediately preceding the date of injury, and had not received an offer or directive from said employer to work from home instead of from his or her place of employment;

      ii. if the date of injury was more than fourteen days after March 23, 2020, such employee was employed by an employer deemed essential by the Department of Economic and Community Development pursuant to Executive Order 7H;

iii. the contraction of COVID-19 by such employee was confirmed by a positive laboratory diagnostic test within three weeks of the date of injury or diagnosed and documented within three weeks of the date of injury by a licensed physician, licensed physician's assistant, or licensed advanced practice registered nurse, based on the employee's symptoms; and

iv. a copy of the positive laboratory diagnostic test results or the written diagnosis required by subdivision (iii) of this subsection shall be provided to the employer or insurer.

(b) Any wage replacement benefits paid under Section 31-307 or 31-308(a) of the Connecticut General Statutes shall be reduced by the amount of any paid sick leave available to an employee through the Emergency Paid Sick Leave Act set forth in sections 5101 et seq. of the Families First Coronavirus Response Act, as amended from time to time, or through another paid sick leave program specifically available in response to COVID-19 and separate from any accrued paid time off regularly available to the employee.

(c) The presumption in subsection (a) of this section may be rebutted only if the employer or insurer demonstrates to a workers' compensation commissioner by a preponderance of the evidence, that the employment of the individual was not the cause of his or her contracting COVID-19.

(d) For purposes of this section, the date of injury for an employee who has contracted COVID-19 shall be the date between March 10, 2020 and May 20, 2020 that the employee was first unable to work or died due to a diagnosis of COVID-19 or to symptoms that were diagnosed as COVID-19, whichever occurred first.

(e) Beginning on August 1, 2020, the Workers' Compensation Commission shall produce a report each month on COVID-19 workers' compensation claims and shall provide such reports to the Office of the Governor and the joint standing committees of the General Assembly having cognizance of matters relating to labor, insurance, and commerce. Such monthly reports shall contain, but need not be limited to:

i. The number of COVID-19 and non-COVID-19 claims filed;

ii. the percent of such claims litigated;

iii. the average time from the date a hearing is requested to a hearing, and to a ruling, regarding a litigated COVID-19 claim;

iv. the number of rulings issued by the Workers' Compensation Commission regarding COVID-19 claims, and the number that have been appealed to the Compensation Review Board; and

v. to the extent reasonably practicable, information about the percent of non-litigated COVID-19 workers' compensation claims filed by hospital, municipal, and other employees that are record-only claims, have been granted or denied by the employer or insurer, and are being paid, including paid without prejudice, by the employer or insurer.

Employers and insurers shall comply with any requests from the Workers Compensation Commission for information pertinent to said reports.

(f) An employee who has contracted COVID-19 but who is not entitled to the presumption under subsection (a) of this section shall not be precluded from making a claim as provided in Chapter 568 of the Connecticut General Statutes.

2. **Discharge, discrimination, discipline, and deliberate misinformation or dissuasion prohibited.** Section 31-290a of the Connecticut General Statutes is modified to read as follows:

(a) No employer who is subject to the provisions of this chapter shall (1) discharge or cause to be discharged, or in any manner discipline or discriminate against any employee because the employee has filed a claim for workers' compensation benefits or otherwise exercised the rights afforded to him pursuant to the provisions of this chapter, or (2) deliberately misinform or otherwise deliberately dissuade an employee from filing a claim for workers' compensation benefits.

(b) Any employee who is so discharged, disciplined or discriminated against or has been deliberately misinformed or dissuaded from filing a claim for workers' compensation benefits may either: (1) Bring a civil action in the superior court for the judicial district where the employer has its principal office for the reinstatement of his previous job, payment of back wages and reestablishment of employee benefits to which he would have otherwise been entitled if he had not been discriminated against or discharged and any other damages caused by such discrimination or discharge. The court may also award punitive damages. Any employee who prevails in such a civil action shall be awarded reasonable attorney's fees and costs to be taxed by the court; or (2) file a complaint with the chairman of the Workers' Compensation Commission alleging violation of the provisions of subsection (a) of this section. Upon receipt of any such complaint, the

chairman shall select a commissioner to hear the complaint, provided any commissioner who has previously rendered any decision concerning the claim shall be excluded. The hearing shall be held in the workers' compensation district where the employer has its principal office. After the hearing, the commissioner shall send each party a written copy of his decision. The commissioner may award the employee the reinstatement of his previous job, payment of back wages and reestablishment of employee benefits to which he otherwise would have been eligible if he had not been discriminated against or discharged. Any employee who prevails in such a complaint shall be awarded reasonable attorney's fees. Any party aggrieved by the decision of the commissioner may appeal the decision to the Appellate Court.

Unless otherwise specified herein, this order shall take effect immediately and remain in effect for six months, unless earlier modified or terminated.

Dated at Hartford, Connecticut, this 24th day of July, 2020.

Ned Lamont
Governor

By His Excellency's Command

Denise W. Merrill
Secretary of the State