

Regulations of Connecticut State Agencies

TITLE 31. Labor

Agency

Office of the State Treasurer

Subject

Second Injury Fund

Inclusive Sections

§§ 31-354-1—31-354-15

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Second Injury Fund

Sec. 31-354-1. Definitions

For purposes of Sections 31-354-1 to 31-354-34, inclusive of the Regulations of Connecticut State Agencies, the following definitions apply:

(1) “Acknowledgement of Prior Physical Condition” means a written notice from the employee to the employer in accordance with the provisions of section 31-325 of the General Statutes of any physical defect which imposes a further or unusual hazard upon the employer.

(2) “Agent” means a person who is authorized by a principal to act for or in place of that principal.

(3) “Appeal” means a request for a hearing before the Compensation Review Board to hear appeals from decisions made by commissioners pursuant to Chapter 568.

(4) “COLA” means the cost of living adjustment provided to claimants pursuant to Chapter 568.

(5) “Carrier” means the insurance company who represents the employer and pays compensation benefits to employees who have suffered a compensable injury.

(6) “Claimant” means the injured employee, or in the case of his or her death, his or her estate, and any class of dependents who may be entitled to benefits under Chapter 568.

(7) “Compensable Injury” means an injury for which a claimant is entitled to benefits under Chapter 568.

(8) “Commission” means the Workers’ Compensation Commission.

(9) “Commissioner” means the compensation commissioner or other duly authorized person or a person who has jurisdiction in the matter referred to in the context.

(10) “Compensation” means benefits or payments mandated by the provisions of Chapter 568.

(11) “Compensation Rate” means the amount of weekly compensation that is equal to the percentage of average weekly earnings as of the date of the injury, calculated pursuant to the provisions of Chapter 568.

(12) “Compensation Review Board” means the chairman or his authorized representative and 2 commissioners appointed by him who sit on a review board and hear appeals from decisions made by compensation commissioners pursuant to section 31-280b of the General Statutes.

(13) “Concurrent Employment” means the employment of a claimant with more than one employer at time of injury.

(14) “Custodian of the Fund” means the treasurer of the state of Connecticut or his designee.

(15) “Debtor” means one who owes a debt to a creditor, who may be compelled to pay that debt to another pursuant to section 31-355a of the General Statutes.

(16) “Fund” means the Second Injury Fund.

(17) “Date of Liability” means the date when the Fund becomes statutorily responsible for a claim.

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(18) “Date of Transfer” means the date the Fund’s liability for a compensable injury is approved by a commissioner.

(19) “Dependent” means a member of the injured employee’s family or next of kin who was dependent upon the earnings of the employee at the time of injury.

(20) “Employee” means any person as defined in subsection 9 of § 31-275 of the General Statutes.

(21) “Employer” means any entity as defined in subsection 10 of § 31-275 of the General Statutes.

(22) “Finding and Award” means a document issued by a commissioner determining the resolution of a disputed matter.

(23) “Formal Hearing” means a hearing before a commissioner where all evidence and arguments are recorded by a court reporter.

(24) “Group Program” means an insurance program providing health and accident benefits to claimants pursuant to subsection (f) of section 31-349 of the General Statutes.

(25) “Informal Hearing” means an informal discussion by parties in interest in an attempt to resolve a claim.

(26) “Lien” means a claim, encumbrance, or charge on property for the payment of a debt or the performance of an obligation.

(27) “Notice” means a notice in writing given to the custodian of the Fund, or his designee, as required by the following sections: 31-355, 31-349, 31-310, 31-307a, 31-306, and subsection (d) of 31-284b of the General Statutes.

(28) “Occupational Disease” means any disease peculiar to the occupation in which the employee was engaged in excess of the ordinary hazards of employment.

(29) “Order of Payment” means an award made by the commissioner.

(30) “Physician” means any person defined in section 20-1 of the General Statutes and licensed under the provisions of Chapters 370, 371, 372 and 373 of the General Statutes to practice in this state.

(31) “Previous Disability” means an employee’s pre-existing condition, a permanent physical impairment resulting from accidental injury, disease or congenital causes.

(32) “Stipulation” means a voluntary agreement between the parties where consideration is exchanged to relieve the respondent from any further obligations it may have to the claimant.

(33) “Respondent” means the employer and/or its insurance carrier, and/or the Fund.

(34) “Second Injury” means a compensable injury to an employee with a previous disability.

(35) “Transfer Agreement” means an agreement in writing to pass compensation liability from an employer or its insurer to the Fund in accordance with statutory requirements.

(36) “Trustee” means one who holds property in trust for the benefit of another, and who may be compelled to surrender that property to a creditor of that beneficiary in accordance with the provisions of section 31-355a of the General Statutes.

(37) “Voluntary Agreement” means a document negotiated between an employer and its

employee, establishing a consent to compensation. It is the basis for all compensation claims when there is no dispute that the claimant suffered a compensable injury.

(Effective July 21, 1994)

Sec. 31-354-2. Procedures under subsection (d) of § 31-284b of the general statutes

(a) Use of Second Injury Fund.

An employer who is required under subsection (a) of § 31-284b to provide health and life insurance shall continue and maintain group benefits, accident, health and life insurance coverage, or payments into an employee welfare fund. The Second Injury Fund is only responsible for reimbursement of premiums paid by the employer for such accident, health and life insurance coverage for claimants who are totally disabled and whose disability continues for 104 weeks.

(b) Liability

The Second Injury Fund reimbursement liability shall not start sooner than the end of 104 weeks. The Second Injury Fund may accept a late claim application notice from an employer which shall become effective 60 days after the date of notice.

(c) Notice

(1) Notice to the Fund shall include:

(A) A copy of the voluntary agreement or a copy of the finding and award.

(B) A copy of the insurance policy and evidence of premium payment;

(C) Copies of the medical records or a commissioner's order substantiating temporary total status; and

(D) Copies of the payment record evidencing 104 weeks of temporary total status.

(2) Reimbursement ceases on termination of temporary total status of the claimant.

(Effective July 21, 1994)

Sec. 31-354-3. Procedures under subsection (f) of § 31-301 of the general statutes

(a) Condition Precedent to Payment

As conditions precedent to payment of benefits by the fund, the claimant shall provide the following:

(1) A copy of the finding and award; and/or the Commissioner's order of payment.

(2) A copy of the petition for review or notice of appeal;

(3) The claimant's base compensation rate;

(4) An affidavit stating that claimant is not receiving benefits from another source; or

(5) Dependency benefit; and

(6) Copies of medical bills attached to the order.

(b) Administration During the Appeal

The order from the commissioner shall also include a statement that the insurance carrier or the self-insurer shall administer the file during the pendency of the appeal.

(c) Conclusion of Appeal: Losing Party

When the appeal is concluded, the losing party shall repay all the benefits the Fund

provided, and include an interest payment at the rate of 10% per annum. This interest shall start on the date of the first payment and shall continue until the obligation is paid in full. There shall be no compromise of any portion of this obligation. Upon the denial of benefits to the claimant, the commissioner who originally heard the case or his successor, shall conduct a hearing to determine the repayment schedule for the claimant.

(Effective July 21, 1994)

Sec. 31-354-4. Procedures under subparagraph (B) of subdivision (2) of subsection (a) of § 31-306 of the general statutes; COLA for dependents

(a) For employers to qualify for reimbursement from the Fund for COLAS added to widow and dependents benefits, the injury shall be prior to October 1, 1977. Notice to the Fund shall include the date of injury or death, and a voluntary agreement or a finding and award.

(b) If the date of injury is on or after October 1, 1977, the employer remains liable for the Cost of Living Adjustments, and is not entitled to reimbursement from the Fund.

(Effective July 21, 1994)

Sec. 31-354-5. Procedures under subsection (b) of § 31-307a of the general statutes; COLA for employees

After the notice the Second Injury Fund reimburses insurance carriers and employers for COLAS paid to claimants who are totally disabled from an injury which occurred prior to October 1, 1969.

(Effective July 21, 1994)

Sec. 31-354-6. Benefits under § 31-308a of the general statutes

The Fund shall require a written order by the commissioner before it may make payments of benefits pursuant to Sec 31-308a of the General Statutes. The claimant is only entitled to these benefits up to the base compensation rate established at the time of the injury.

(Effective July 21, 1994)

Sec. 31-354-7. Procedures under § 31-310 of the general statutes

(a) Concurrent Employment

An employee may be eligible for concurrent employment benefits if that employee falls within the definition of an employee as defined in subparagraphs (A) and (B) of subdivision (9) of section 31-275 of the General Statutes. An employer may be a concurrent employer for purposes of this section if that employer falls within the definition of an employer as defined in subparagraphs (A), (B), (C), and (D) of subdivision (10) of section 31-275 of the General Statutes.

(b) Eligibility

A claimant is eligible for concurrent employment benefits if the claimant has two (2) or more jobs at the time of his compensable injury. The Fund shall reimburse an employer for

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that part of the compensation rate represented by the earnings from places of employment other than where the employee sustained the injury.

(c) **Carrier Reimbursement**

The carrier shall pay the full compensation rate and then seek reimbursement from the Fund. The reimbursement does not include medical bills.

(d) **Notice**

(1) Notice to the Fund for reimbursement shall contain the following documentation:

(A) The worker's compensation district;

(B) The voluntary agreement approved and signed by a commissioner or finding and award;

(C) Form 44-68 approved and signed by a commissioner;

(D) Statement of earnings; including copies of documents showing claimant's earnings with all employers during the § 31-310 time period.

(E) Copies of claimant's benefits checks; or an accounting from the employer or insurance carrier.

(F) Medical reports;

(G) Claimant's status: permanent total, temporary total, permanent partial, temporary partial;

(H) Number of weeks of disability paid for each disability status; and

(I) Amount requested for reimbursement.

(2) Send all correspondence to:

Second Injury Fund
Accounting Department
P.O. Box 668
10 Griffin Road North
Windsor, CT 06095-0668

(Effective July 21, 1994)

Sec. 31-354-8. Procedures under § 31-325 of the general statutes

(a) **Acknowledgement of Physical Condition**

A worker with a prior work injury or physical impairment may execute an acknowledgement of his physical defect which shall be approved by the compensation commissioner in the appropriate district. The language shall be very specific as to the condition acknowledged.

(b) **Transfer of Liability**

(1) In the event of an injury, a proper acknowledgement allows the employer to transfer the liability of the compensable injury to the Fund from the first day of the disability.

(2) Employees executing an acknowledgement shall not be prejudiced in the event of an injury; employers shall provide the requisite benefits until there is an agreement with the Fund.

(c) **Notice**

Notice to the Fund shall contain:

- (1) A copy of the acknowledgement;
- (2) A copy of an approved voluntary agreement; or finding and award;
- (3) Supporting medical records; and
- (4) Claimant's statement describing the incident.

(Effective July 21, 1994)

Sec. 31-354-9. Procedures under § 31-349 of the general statutes

(a) **Compensation for Second Liability**

(1) If an employee with a permanent physical impairment incurs a second compensable injury either by accident or by disease, and both conditions result in a permanent disability which is materially and substantially greater than the disability which would have resulted from the second injury alone, he shall receive compensation for the entire amount of disability.

(2) As a condition precedent to the liability of the Second Injury Fund, the employer or his insurance carrier shall, after the expiration of 52 weeks of disability and ninety days prior to the expiration of the 104 week period of disability notify the custodian of the Second Injury Fund of this pending case.

(3) With timely notice, i.e. notice to the custodian of the Second Injury Fund of the pending case 90 days prior to the expiration of the 104 week period of disability, an employer or compensation carrier may transfer its liability to the Second Injury Fund.

(b) **Notice**

(1) Notice to the Fund shall:

- (A) Be sent to the custodian of the fund or his designee;
- (B) Be accompanied by a voluntary agreement or finding and award. If there is no voluntary agreement or finding and award, the claim may be rejected unless it is being contested as to compensability. The employer or insurance carrier shall provide the Fund with a copy of its notice of contest and shall request that the Fund be made a party of interest in the contested claim.
- (C) Be accompanied by copies of all supporting medical reports; and
- (D) Contain a statement outlining the claim, type and amount of benefits paid to date or other proof of disability.

(2) If notice is untimely or a voluntary agreement is not approved within the statutory time period, the Fund may reject the claim.

(c) **Transfer Agreement**

(1) If the claim is voluntarily accepted by the Fund, the employer or its carrier shall prepare a transfer agreement.

(2) Clearly stated within the body of the transfer agreement shall be:

- (A) An accounting and calculation of benefits paid toward the 104 weeks and the type of benefits paid; temporary total, temporary partial, and/or permanent partial disability.

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(B) The claimant's present disability status and copies of all medical data substantiating such status.

(C) A reimbursement request for all compensation benefits paid and medical costs incurred subsequent to the date of fund liability.

(3) If more than one body part is injured, the Fund shall only accept transfer of the body parts statutorily eligible for transfer. Each body part may transfer upon payment of 104 weeks of disability attributable to that body part.

(4) The claimant's signature may be required by the fund.

(d) **Claimant's Process and Procedures**

(1) A change of address shall be forwarded to the Fund immediately.

(2) A change of the authorized attending physician requires prior approval from the Fund or the commissioner.

(3) A medical report shall be sent to the Fund from your authorized attending physician i.e. after each visit.

(4) Prior to the scheduling of any non-emergency surgery, a second opinion from another physician may be required. Upon notification, the Fund may schedule the evaluation appointment.

(5) All medical and pharmaceutical bills forwarded to the Fund for payment shall be itemized originals; "balance forward" bills are not acceptable.

(6) Changes in circumstances affecting a claim, including but not limited to the following, shall be reported to the Fund:

(A) Marital Status - divorce; living apart; spousal death;

(B) Dependency - attaining majority; emancipation; student status;

(C) Legal Representation - a change in attorneys; a termination of client relationship;

(D) Medical Treatment - a change in attending physician; medical referrals;

(E) Benefit Payments - errors; overpayment; and

(F) Employment - date returned to work.

(7) Failure to notify the Fund in writing of any changes in circumstance could result in the discontinuation of benefits and possible litigation.

(8) send all correspondence to:

Second Injury Fund

Claims Department

P.O. Box 668

10 Griffin Road North

Windsor, CT 06095-0668

(e) **Obligations of Authorized Attending Physicians**

Such regular progress reports as may be required by the Second Injury Fund shall be sent to the Fund by the attending physician.

(f) **Transfer of Liability under Subsection (f) of Section 31-349 of the General Statutes**

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(1) No hearing, informal or formal, shall be assigned or held for the purpose of transferring liability to the Second Injury Fund under the provisions of subsection (f) of Section 31-349 of the General Statutes, unless and until the claimant or his representative has certified in writing to the Second Injury Fund the following information:

(A) The date the claimant's employer removed all or substantially all of its industrial or commercial operations to a location outside the state of Connecticut, or the date the claimant's employer permanently shut down all of its operations within a business facility located in the state, and thereafter failed to comply with the provisions of section 31-284b of the General Statutes;

(B) The name and address of the claimant; the claimant's employer; the claimant's compensation carrier; and the claimant's group health carrier;

(C) A copy of the voluntary agreement or the finding and award approved and signed by a compensation commissioner;

(D) A statement indicating that the claimant is currently receiving compensation benefits and shall notify the Fund every 30 days that he/she is still receiving compensation benefits; and

(E) A description of the health plan in force on the date of injury, including whether or not a contribution was made by the claimant to the cost of premium.

(2) Liability

The Fund's liability for the costs of the coverage shall begin 15 days after the custodian is so notified and shall continue so long as the individual receives compensation pursuant to this chapter; and enrollment into a group program shall be deemed to be equivalent coverage.

(3) Notice

The Fund shall not be liable for any costs incurred (1) prior to the date the notice is received or (2) during the 15 days after the notice is received if the custodian determines during that period that the individual is ineligible. Failure to comply with any of the foregoing provisions during the fifteen day period after the notice has been received by the Fund may render the claimant ineligible.

(4) Jurisdiction

A commissioner having jurisdiction may, when in the opinion of that commissioner sufficient cause exists, assign for an informal or formal hearing a case involving a request of transfer of liability of the Fund pursuant to subsection (f) of section 31-349 of the General Statutes.

(Effective July 21, 1994)

Sec. 31-354-10. Voluntary agreements and stipulations under § 31-353 of the general statutes

(a) If the treasurer and an injured employee, or his legal representative reach a voluntary agreement in regard to compensation payable under section 31-349 of the General Statutes such agreement shall be submitted in writing to the commissioner for his approval and,

upon approval, shall remain in effect until otherwise ordered by the commissioner.

(b) The treasurer may make final payment by stipulation in any matter concerning the fund, subject to the approval of the commissioner, whenever it is for the best interests of the injured employee.

(Effective July 21, 1994)

Sec. 31-354-11. Civil action for reimbursement to the fund under § 31-355 of the general statutes

When a finding and award of compensation has been made against an uninsured employer who fails to pay it, that compensation shall be paid from the Second Injury Fund, and if the disability continues and there are further claims, another formal hearing with a commissioner's written order or award is required as a condition precedent before the Fund may make any future payments.

(Effective July 21, 1994)

Sec. 31-354-12. Payment to claimant under § 31-355 of the general statutes

Payment of compensation shall be paid from the Fund provided:

(a) A formal hearing is held and the Second Injury Fund, the Attorney General's Office, and Workers' Compensation Department, were noticed to attend.

(b) A finding and award is granted against the employer after notice to the employer.

(c) Ten days have passed from the date of notice of the award to the employer and the claimant has not received payment and the employer has not instituted an appeal.

(d) The claimant requests and is granted a supplemental order of payment against the Fund.

(Effective July 21, 1994)

Sec. 31-354-13. Employer liability under § 31-355 of the general statutes

(a) The employer shall be liable for all such payments made out of the Fund together with all attorney's fees; the employer's assets shall be attached until the Fund is reimbursed.

(b) A proper and sufficient plan for payment to the Fund may be in full, quarterly or monthly payments; payments other than in full shall require a promissory note reciting the amount, terms and conditions of payment.

(c) If neither reimbursement nor a payment plan has been implemented within 90 days of any such payment from the Fund, the attorney general may bring a civil action to recover all amounts paid by the Fund pursuant to such award, plus double damages, reasonable attorney's fees and costs. Any amount paid by the employer after the filing of said action, but prior to its completion, shall be subject to an interest charge of 18% per annum, calculated from the date of original payment from the Fund.

(Effective July 21, 1994)

Sec. 31-354-14. Collection of monies owed fund under § 31-355 of the general statutes

Whenever the Second Injury Fund is required pursuant to section 31-355 of the General Statutes or subsection (f) of section 31-349 of the General Statutes to pay benefits or compensation mandated by the provisions of the Workers' Compensation Act Chapter 568, for any employer or insurer who fails or is unable to make such payments, the amount so paid by the Fund shall be collected by any means provided by law for the collection of any tax due the state of Connecticut including any means provided by section 12-35 of the General Statutes.

(Effective July 21, 1994)

Sec. 31-354-15. Certificate of lien under § 31-355a of the general statutes

Any such amount owed to the Second Injury Fund pursuant to section 31-355 of the General Statutes or subsection (c) of section 31-349 of the General Statutes shall be a lien from the due date until discharged by payment against all property of the employer or insurer within the state including debts owed to the employer or insurer, except property exempt from execution.

(a) Filing

A certificate of lien without specifically describing such personal or real property, signed by the state treasurer, may be filed in the office of the clerk in any town in which such real property is situated; or in the case of personal property may be filed in the office of the secretary of state. Such lien shall be effective from the date on which it is recorded.

(b) Concealed Property, Debtor

When the property to be liened is concealed in the hands of the agent or trustee of the employer, or is a debt due to the employer, the certificate of lien may be filed by leaving a copy thereof, by registered or certified mail with such agent, trustee or debtor. From the time of receipt of such lien, all property of the employer or insurer in the hands of such agent or trustee, and any debt due from such debtor shall be secured to pay the amount of such lien. The state treasurer may require such agent, trustee or debtor to disclose under oath within 10 days whether he had the property of the employer or insurer, or is indebted to him. If such agent, trustee or debtor fails to disclose, or having disclosed fails to turn over the property or pay to the state treasurer the amount of indebtedness the state treasurer may proceed against him by scire facias against garnishee. The payment by such agent, trustee or debtor to the state treasurer shall discharge him of his liability to the employer or insurer to the extent thereof.

(c) Foreclosure of Lien

Any action for the foreclosure of such lien shall be brought by the attorney general in the name of the state in the Superior Court for the Judicial District in which the subject property is situated.

(d) Discharge of Lien

When any such amount with respect to which a lien has been recorded under the

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provisions of section 31-355a of the General Statutes has been satisfied, the state treasurer upon the request of any interested party, shall issue a certificate discharging such lien.

(Effective July 21, 1994)