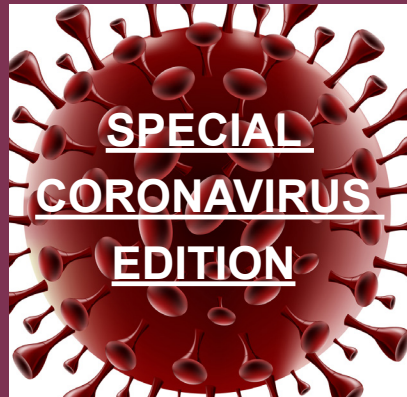


September  
2020

Issue 105

# Trust Intelligence

A Newsletter published by the Workers' Compensation Trust



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## Governor Issues Executive Order Workers' Compensation Covered for Front Line Workers During Early Days of Pandemic

On July 24th, Governor Ned Lamont signed Executive Order No. 7JJJ, which creates a rebuttable presumption that all employees who worked on site at their employer and tested positive for COVID-19 during the early days of the pandemic contracted the disease while on the job, giving employees a presumptive claim to workers' compensation coverage if they so choose to make a claim. It was widely reported that the state AFL-CIO and other unions in the state lobbied the governor's office to get this provision in place. Connecticut does follow several other states in taking such executive order action which, in effect, significantly limits the burden on the affected employee to prove that they acquired COVID-19 through occupational exposure versus through general community spread.

In order for employees to avail themselves of the presumption created by Executive Order No. 7JJJ, the employee must:

- Exhibit that he or she 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 (the "date of Injury");
- Furnish to the employer and insurer a copy of the positive laboratory diagnostic test or written diagnosis provided by a licensed physician, licensed physician's assistant, or licensed advanced practice registered nurse, confirming the contraction of COVID-19 within three weeks of the date of injury; and
- Exhibit that he or she 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 the employer to work from home instead of from his or her place of employment.

The Executive Order concludes that this presumption may be rebutted ONLY if the employer or insurer demonstrates to a workers' compensation commissioner by a preponderance of evidence that the employment of the individual was not the cause of his or her contracting COVID-19. Those employees who have contracted COVID-19 but do not meet the criteria to assert this workers' compensation presumption are nonetheless not precluded from making a workers' compensation claim under the Act.

Since the issuance of the Executive Order, there has been much discussion among many in the industry on its legality and whether it will hold up in court should it be challenged. Only time will tell.

### STAY UP TO DATE

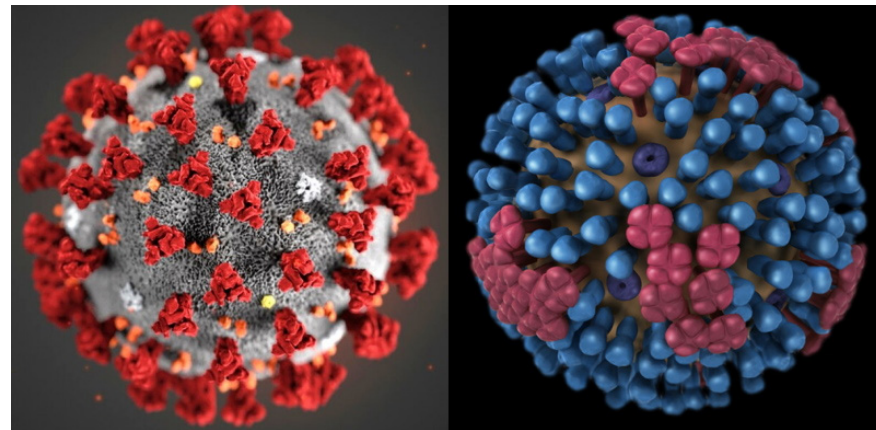
Everyday there are updated guidelines, information and OSHA requirements due to COVID-19. To assist members in keeping up, the Trust has put together a dedicated COVID-19 information page which allows our members to quickly access the most recent information and resources available.

Please visit our website at [www.wctrust.com](http://www.wctrust.com) and click on the COVID-19 Information icon.

# COVID-19 and The Flu Colliding: Now What?

COVID-19 is scary enough but what happens when the flu season converges with COVID-19? What can we do?

**Vaccinate:** While we wait for a vaccine for COVID-19, everyone should be encouraged to get the flu vaccine. According to the CDC, the annual disease burden of influenza in the U.S. has ranged from 12,000 to 61,000 deaths, 140,000 to 810,000 hospitalizations and 9,300,000 to 45,000,000 illnesses. Flu vaccines are available to all Americans and help reduce the burden of the flu, yet less than half of the U.S. population gets the annual flu vaccine. Flu vaccination can also preserve our health care system capacity for those with COVID-19 this fall. If vaccination rates are increased among populations at higher risk of COVID-19 and/or flu related complications, including older adults, health care workers, underserved communities, people with chronic health conditions and school-aged children, it will be beneficial to all.



**Social Distancing:** policies designed to limit the spread of COVID-19 are also effective against the flu. Emphasizing and educating your staff could help mitigate early spread of the flu to flatten the curve for both viruses.

- Preventative Actions:** Per the CDC- to stop the spread of germs and reduce the spread of the flu
- Avoid close contact with people who are sick
  - If you are sick, limit contact with others as much as possible
  - Cover coughs and sneezes; cover your nose and mouth with a tissue when you cough or sneeze and throw the tissue in the trash
  - Keep washing your hands
  - For flu, the CDC recommends people stay home for at least 24 hours after their fever is gone, and should be gone without the need to use fever-reducing medicine. This differs from the stay-at-home guidance for COVID-19.
  - Take antiviral drugs if your doctor prescribes them.
  - Educate your employees. Send out reminders, put posters up, and provide training. Start a campaign and encourage employees to take the proper steps to avoid the flu.

<https://www.cdc.gov/flu/prevent/preventing.htm>

## Education Gone Digital

In March the world changed as we know it, particularly as it relates to education and training. As in-person training was no longer going to work, we launched Trust Webinars to meet our goal of providing our members with relevant and timely education. Our first webinar was a huge success. It was held on March 24, 2020 titled “Employment Ramifications of COVID-19”; and 217 members attended. We have held at least one educational webinar a week; sometimes twice a week offering a wide variety of subjects. The pandemic has been first and foremost on everyone’s mind; to date we have provided seven COVID related trainings. Members also took advantage of using this time to provide safety training through the OSHA Safety Series. Supervisory Tool Box sessions were added to this series as well.

Previous run webinars can be viewed On Demand. Through the beginning of August over 1900 employees have been trained.

Visit our home page, [www.wctrust.com](http://www.wctrust.com) to see the current webinar offerings and to access the On Demand webinars.

# Consistent Employer Communication with Injured Workers

From time to time, you hear about a workers’ compensation claim involving a minor strain or sprain to a part of the body that at face value should be “simple” to recover from only to learn that it has gone on for years and years without the worker ever returning to pre-injury level or back to work. What is the difference between this claim and a similar one that recovers and closes out within an expected timeframe? The difference is referred to as the “disability mindset.”

No doubt, injuries can pull a worker out of their normal work/life routine. Some people begin focusing on negative events or possibilities, develop anxiety, and lose contact with coworkers. As this continues, the injured worker develops a negative perception of the disability process and may begin to catastrophize about a cascade of successively worse outcomes. All this, coupled with the stresses and strains we are all currently dealing with during a worldwide pandemic, and you can quickly see how a simple claim can go off the rails!

While many factors can have a significant impact on disability durations, some simple strategies can turn the tide for a more positive injured worker recovery outcome. One best practice approach is having the supervisor contact the injured worker within the first few days of the injury to ask how they are doing, offering modified duty that allows the worker to recover while working, and fostering a workplace that doesn’t stigmatize employees with injuries.

To have a well-rounded and productive workforce, employers must take the initiative in setting the stage before a disabling injury occurs by creating a culture of support that can have a positive impact if and when injuries do occur. It is important to identify traits of a supportive workplace as well as encourage the use of an employee assistance program and other tools available to support good mental health. Ultimately, it is the workers’ perception of their condition, contributed to by the workplace culture, which determines their recovery and not the injury itself. During these uncertain and stressful times for all, it’s critical to have that positive work environment established before the injury happens to minimize or avoid all together the disability mindset of your employees that could lead to prolonged disability durations and costly claims.

## Opioid Utilization Continues to Decline on Trust Claims

In August, the Trust participated in an annual stewardship meeting with its pharmacy benefit manager, myMatrixx, to review the performance of the entire pharmacy program to ensure that it is meeting the needs of filling injured workers’ medications, while doing so in a safe and cost effective manner. One of many highlights of the review was the opioid utilization program. Over the past four years, the Trust has seen a significant decline in opioid usage as well as cost. One key metric is the average Morphine Equivalent Dosing (MED) levels. MED determines a patient’s cumulative intake of any drugs in the opioid class over 24 hours in an effort to help reduce the likelihood of overdose. The Trust has consistently kept that number in the low 40s and recently dipped below 40 and into the high 30s; well below the 90 MED threshold recommended by the Workers’ Compensation Commission Medical Guidelines.

	2016	2017	2018	2019
Utilizing Patients	461	354	299	200
Prescription Count	1,707	1,355	1,222	882
Total Cost	\$204,117	\$163,637	\$142,044	\$77,256
Cost Per Script	\$120	\$121	\$116	\$88
Average MED	44	41	41	37

- 57% decrease in utilizing patients
- 48% decrease in Rx count
- 62% decrease in total cost
- 16% decrease in average MED

The Trust continues to be committed in helping control unnecessary opioid dispensing to injured workers to ensure their safety from abuse and possible addiction and the numbers above clearly speak to this effort!



# OSHA CORNER

In the initial phase of the pandemic OSHA issued some temporary enforcement guidelines as employers struggled to secure Personal Protective Equipment, attempted to identify work related COVID-19 cases for recording, reporting severe injuries (hospitalizations and deaths), respiratory protection requirements and more.

OSHA has issued an interim enforcement response plan for the pandemic which provides instructions and guidance to OSHA Area offices for handling coronavirus-related complaints, referrals and severe illness reporting. The response plan outlines procedures for addressing reports of workplace hazards related to the coronavirus. Fatalities and imminent danger exposures related to the coronavirus will be prioritized for on-site inspections. The response plan contains procedures and sample documentation for inspectors to use during coronavirus-related inspections. Workers requesting inspections, complaining of coronavirus exposure, or reporting illnesses may be protected under one or more whistleblower statutes and will be informed of their protections from retaliation.

First, OSHA is increasing in-person inspections at all types of workplaces. The new enforcement guidance reflects changing circumstances in which many non-critical businesses have begun to reopen in areas of lower community spread. The risk of transmission is lower in specific categories of workplaces, and personal protective equipment potentially needed for inspections is more widely available. OSHA staff will continue to prioritize COVID-19 inspections, and will utilize all enforcement tools OSHA has historically used.

Second, OSHA is revising its previous enforcement policy for recording cases of coronavirus. Under OSHA's recordkeeping requirements, coronavirus is a recordable illness, and employers are responsible for recording cases of the coronavirus, if the case:

- Is confirmed as a coronavirus illness;
- Is work-related as defined by 29 CFR 1904.5; and
- Involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid or days away from work.

Under the new policy OSHA will enforce the recordkeeping requirements of 29 CFR 1904 for employee coronavirus illnesses for all employers. Given the nature of the disease and community spread, however, in many instances it remains difficult to determine whether a coronavirus illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace. OSHA's guidance emphasizes that employers must make reasonable efforts, based on the evidence available to the employer, to ascertain whether a particular case of coronavirus is work-related.

Employers can check OSHA's webpage at [www.osha.go/coronavirus](http://www.osha.go/coronavirus) for updates. If you have any questions concerning severe injury reporting or recording injuries on the OSHA 300 form please contact [fronczek@wctrust.com](mailto:fronczek@wctrust.com)

## Partnering with RELIAS Bringing Benefits to Trust Members

The Trust is pleased to announce another benefit for our members. We have partnered with Relias, a leading healthcare software solutions company to provide a 15% discount for Trust members when the Relias Learning Management System and a training library is purchased. With over 10,000 clients, 7,000 unique training courses and over 47 million courses completed, Relias is the industry leader in Healthcare and Social Service education.

The Trust has purchased the Relias Health and Safety Suite for our members. Access is available through Trust University. This no-cost program, available to our members, provides valuable benefits to support your training needs.

In addition, Relias offers many clinical based libraries which provide for specific training and CEUs for your credentialed staff. Some of the training libraries available include; Post-Acute & Senior Care, Behavioral Health, Intellectual & Developmental Disabilities and ADA, Acute & Ambulatory Care just to name a few.

To contact a Relias representative, call (800) 381-2321 and mention your membership with the Trust.

## BUSTED

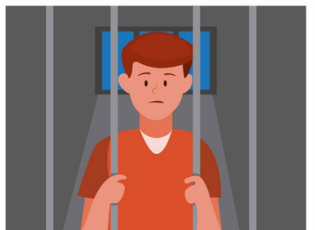


In early December of 2017, a registered nurse working for a large home care agency slipped and fell while walking up a set of stairs to a client's residence. He injured multiple body parts, with the most serious being his left ankle. Ultimately, the ankle required surgical intervention and the injured employee remained out of work during what was thought to be a normal recovery of a month or two. Several months turned into almost a year, the employee continued to complain of chronic pain and reported that he could not walk or even drive his vehicle to his doctor for follow up care. It seemed that at every turn, he had an excuse not to follow up with his doctor, canceled appointments, and showed no signs of returning back to work, even in a light duty status.

Based on the facts of the case, the discrepancies in the stories he was communicating to the treating provider and the assigned claim representative, the claim was directed to the Trust's Special Investigation Unit for additional investigative measures including multiple surveillance assignments during late 2018 through the spring of 2019 which demonstrated that the employee owned several rental properties and was found to be engaging in very active repair of those properties including multiple trips to home improvement centers in which he was lifting, carrying and installing home repair supplies. Clearly, his complaints of chronic ankle pain was not consistent with his activities seen on video. The footage of his activities was ultimately viewed by his treating physician who, up until that point, was considering a second surgery to determine the reason for his chronic pain complaints. Instead he released the worker to full duty and placed him at maximum medical improvement.

Concurrently, the Trust reached out to the claimant's counsel with the surveillance information and strongly encouraged the attorney to advise his client to settle the case for monies already paid. Both the claimant and his counsel felt that was the best approach to settle this claim full and final in order to avoid legal action. Anticipated savings associated with the settlement of this claims was well over \$100k as a result of catching this guy in the act.

If you or someone in your organization suspect fraud or other suspicious activities surrounding a reported workers compensation claim, please call our dedicated confidential and anonymous Fraud Line at 1-800-559-3739.



### Welcome to the Newest Members of the Trust

Bethel Ambulette, Inc.  
Blue Hills Civic Association  
Bristol Housing Authority  
Cammie, LLC dba TA Executive Care  
Domus Kids, Inc.  
East Hartford Housing Authority  
Eye Care Group, PC  
Glastonbury Housing Authority  
Greater New Haven Transit District

Green Lodge of Manchester Inc.  
Grove School, Inc.  
Middletown Housing Authority  
My Care Companion, LLC  
North East Transportation Co., Inc.  
Norwalk Transit District  
Southeast Area Transit District  
Supportive Environmental Living Facility  
Z Inc.

## The Legal Corner

Attorney John M. Letizia, Managing Partner  
Letizia, Ambrose & Falls, PC

### Telecommuting During COVID-19 Pandemic

The COVID-19 pandemic caused many businesses to utilize telecommuting more than ever before. So while some businesses have been telecommuting for years, many just got thrown into it in March. It is important to have some policies in place to allow employees to telecommute which may increase employee productivity, reduce turnover and aid in retention and recruitment efforts, but there are risks and challenges. Employers must assess who could be an effective remote worker, and how the employer will be able to monitor and supervise the work performed by that employee. This is in addition to considering the legal challenges related to workers' compensation injuries, determining true work time (versus cleaning the new makeshift home office a.k.a. the children's playroom) or waiting to work (e.g. a Zoom meeting that is delayed due to a late attendee) and interruptions. An employer must have a comprehensive telecommuting policy that clearly defines who and what positions are eligible to work remotely, whether the remote work is full-time or part-time, how employees will be supervised and more. Moreover, employers should be aware of the extent to which working remotely can qualify as an accommodation under the Americans With Disabilities Act (ADA), including possibly as a result of the anxiety that arises when an employee is required to go into a busy office during the COVID-19 pandemic.

#### What Type of Employee and Position Would Not be Suitable for Telecommuting?

An employee with little or no work experience, let alone little or no remote work experience, a lack of fundamental computer skills or outdated equipment (e.g., having a problem scanning documents or a new wireless printer not compatible with old computer) may not be the best choice to work remotely, especially when there are distractions (e.g., animals and children at home during working hours, no separate home office) and no direct supervision. Further, certain direct patient care, especially companion care, positions do not lend themselves to this option.

If there is any indication that the employee has had difficulty focusing on work tasks and goals while in the office, remote work should not be an option. Generally, the privilege of remote work should be reserved for the highest performing

employees and then possibly for only part of the work week. Remote work should not usually be considered when the employee is responsible for supervising someone else or the employer's efficiency is compromised when the employee is not present in the office.

An employer should retain the discretion to limit or end the remote working arrangement if the employer's needs are not being met, regardless of how hard the employee is working. An employee's failure to fulfill work requirements, even if working remotely, is cause for limiting or withdrawing the privilege of telecommuting, or possibly disciplinary action. Finally, it should be made clear that all applicable work policies apply to the remote worker (e.g., attendance, accountability, grievance procedure, etc.) to the same extent as for other employees.

#### Workers' Compensation Liability

Employee injuries occurring during the course of work performed at home, incidental to work performed at home, or while tasks are being completed for the benefit of the employer at home, are usually found to be work-related compensable injuries. There is even an argument that if the remote worker is injured on his/her way to the kitchen to get a bottled water during a quick break, he/she may file a workers' compensation claim.

#### Is Telecommuting a Reasonable Accommodation Under the ADA?

The Equal Employment Opportunity Commission ("EEOC") guidance on this issue indicates that allowing an employee to "telecommute" could be a reasonable accommodation even if the employer does not have a telecommuting policy. An employer must determine whether allowing an employee to work at home is a reasonable accommodation by engaging in the interactive process with the employee. In fact, this obligation to engage in the interactive process with the employee would apply if the employee submits a note from his/her psychologist that he/she is unable to work at the office due to his/her fear of contracting COVID-19.

#### Confidentiality

Just like employees in an office, telecommuting

employees must maintain the confidentiality of employer information and should be required to sign a customized non-disclosure agreement protecting the confidentiality of both employer and all patient/client information. Confidential information should be stored centrally and securely within the employer's control and access to the telecommuting employee's home computer must also be secured (e.g. may require telecommuting employee to restrict use of the home work computer).

From a legal perspective, employers must understand the increased risks associated with allowing greater levels of telecommuting with their employees and they must implement clear policies, guidelines and sound security practices to mitigate these risks.

If you have any questions or would like a copy of a sample telecommuting policy, please call Attorney John M. Letizia at (203) 787-7000.

## The Medical Corner

Mark Russi, M.D., MPH,  
Medical Director

### The COVID-19 Strategy in Connecticut

At time of writing, we are experiencing relatively low COVID-19 case numbers in the state of Connecticut, a hard-won circumstance which is well worth defending. The travel restrictions are an important part of the state's efforts to avoid any rekindling of the outbreak we experienced during the springtime. They are accompanied by other measures, including a more concerted effort around contact tracing when cases do arise, as well as more broadly offered testing and universal masking, all in the interest of keeping our numbers controlled.

But, what is the overall strategy? Is it inevitable that everyone will just get this disease, shouldn't we just get it over with so that the general population becomes immune and protected from re-infection? Resoundingly, the answer to both questions is no. And the next six to twelve months will be the most important time in determining how many contract the illness, and how many deaths are averted. A vaccine is likely on its way, hopefully during the the early part of 2021. If it's effective and widely distributed, that will be when some normality returns to our lives. We need to do everything we can to minimize mortality until we get to that time; the measures being taken, even with the disruptions to daily life they necessitate, are worth it.

And there is good reason to be hopeful about the vaccines. Several are already in phase three trials, which will enroll tens of thousands of individuals to determine whether a statistically significant difference in covid infections exists

between those given placebo and those receiving vaccine. Those trials may actually be able to progress more quickly than anticipated due to the higher frequencies of covid infection which currently exist in certain regions of our country. The higher the background rate of infection, the easier it becomes to show whether trial participants who receive vaccine are better protected than those who don't. Regions of the country with high disease incidence will be targeted as the trials continue. We know already that some vaccines being trialed have successfully generated both protective antibody responses and cell mediated immune responses, the two elements thought to be most important for the body's immune system to combat the virus. Also, in contrast to HIV, for which we still have no successful vaccine, the virus which causes covid has characteristics which make it much more likely to be cleared by vaccine-generated immunity.

In the end, the proof of vaccine efficacy is to demonstrate that infections are not occurring among those who are vaccinated. And it goes without saying, once a vaccine is shown to be safe and effective, that Americans will have to get over their phobia about vaccines. Herd immunity will likely require that at least eighty percent of us receive vaccine.

May we all remain safe and healthy in the critical months ahead.



# Upcoming Educational Programs

*The following webinars are designed to assist members in gaining knowledge of issues that surround and support the reduction of work related injuries and create a safe and healthy workplace. To register, or obtain detailed information, go to [www.wctrust.com](http://www.wctrust.com). Your attendance is encouraged.*

## **Diversity in the Workplace: Proper Employment Practices in the Hiring Process**

Thursday, September 24                      2:00 PM - 3:30 PM                      Free to Members and Clients

## **Trust TeleCare: Learn About This Valuable Resource**

Thursday, October 1                      10:00 AM - 11:00 AM                      Free to Members and Clients

## **OSHA Recordkeeping: The Basics**

Thursday, October 8                      10:00 AM - 11:00 AM                      Free to Members and Clients

## **Supervisors Toolkit: Motivating High Performance Teams**

Thursday, October 15                      10:00 AM - 11:00 AM                      Free to Members and Clients

## **Safety Solutions for Facilities and Maintenance Teams**

Thursday, October 22                      10:00 AM - 11:00 AM                      Free to Members and Clients

## **Winter Safety**

Thursday, October 29                      10:00 AM - 11:00 AM                      Free to Members and Clients

### **ON DEMAND WEBINARS**

The Trust has recorded webinars that are available that are available 24 hours a day, 7 days per week. Visit [www.wctrust.com](http://www.wctrust.com) to view these offerings.



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