NORCOTT, J., with whom ZARELLA, J., joins, dissenting. The plaintiff, Tuxis Ohr's Fuel, Inc., employed the claimant as a fuel oil delivery truck driver until he lost the commercial driver's license requisite to that position under General Statutes § 14-44a.[1] The claimant lost his commercial driver's license by operation of General Statutes § 14-44k (c)[2] because, despite earning his living behind the wheel, he nevertheless elected to operate his personal vehicle with a blood alcohol content of more than twice the legal limit while off-duty, a fact which was discovered after he crashed his car and failed a Breathalyzer examination that a police officer administered pursuant to General Statutes § 14-227b.[3] Somewhat counterintuitively, the majority upholds the judgment of the Appellate Court affirming the trial court's dismissal of the plaintiff's administrative appeal from the decision of the Board of Review of the Employment Security Appeals Division (board) upholding, in turn, the decision of the defendant, the Administrator of the Unemployment Compensation Act (act), General Statutes § 31-322 et seq., requiring the payment of unemployment benefits to the claimant. See generally *Tuxis Ohr's Fuel, Inc.* v. *Administrator, Unemployment Compensation Act*, 127 Conn. App. 739, 16 A.3d 777 (2011). Unlike the majority, however, I rely on the plain and unambiguous language of General Statutes § 31-236 (a) (14)[4] and conclude that the payment of unemployment benefits to the claimant was not required because he was disqualified "under state or federal law from performing the work for which such individual was hired as a result of a drug or alcohol testing program mandated by and conducted in accordance with such law," namely, Connecticut's driving while under the influence prevention statutory scheme implemented by §§ 14-44a, 14-44k and 14-227b. Accordingly, I respectfully dissent.

At the outset, I note my agreement with the background facts and procedural history stated by the majority and the Appellate Court. See *Tuxis Ohr's Fuel, Inc.* v. *Administrator, Unemployment Compensation Act*, supra, 127 Conn. App. 741–42. I also agree with the majority's statement of the governing standard of review and the process by which we engage in statutory interpretation under General Statutes § 1-2z, including its recitation of these principles as they relate to appeals from an administrative agency's construction of a statute. See, e.g., *Pictometry International Corp.* v. *Freedom of Information Commission*, 307 Conn. 648, 669–70, 59 A.3d 172 (2013); *Longley* v. *State Employees Retirement Commission*, 284 Conn. 149, 163–64, 931 A.2d 890 (2007).

As § 1-2z directs, I begin with the text of § 31-236 (a), which provides in relevant part: "An individual shall be ineligible for benefits . . . (14) If the administrator finds that the *individual has been discharged or suspended because the individual has been disqualified under state or federal law from performing the work for which such individual was hired as a result of a drug or alcohol testing program mandated by and conducted in accordance with such law . . . .*" (Emphasis added.) I agree with the majority that this case boils down to the parties' disagreement about "what type of 'drug or alcohol testing program' the statute is referencing." The majority concludes that this subsection is ambiguous, crediting the reasonableness of both parties' proffered interpretations, namely, that the "plaintiff contends that the legislature *only* could have meant the state statutory scheme directed toward removing intoxicated drivers from the road, while the defendant insists that the term encompasses any employment based drug or alcohol testing that is conducted pursuant to a federal or state mandate, which typically exists for positions necessitating a high level of safety." (Emphasis added.) The majority then consults the legislative history of § 31-236 (a) (14) and previous decisions of the board, and concludes that § 31-236 (a) (14) is "applicable *only* to state or federally mandated, employment based drug or alcohol testing . . . ." (Emphasis added.) I respectfully disagree and, instead, conclude that the broadly drafted plain language of § 31-236 (a) (14) encompasses our state's driving while under the influence prevention statutory scheme, in addition to employment based drug or alcohol testing programs conducted pursuant to federal or state mandates.[5]

It is undisputed that the claimant was "disqualified under state or federal law from performing the work for which [he] was hired"; General Statutes § 31-236 (a) (14); as his failure of the Breathalyzer test resulted in his automatic disqualification to operate a commercial vehicle under § 14-44k (c). The question is, of course, whether that disqualification was "a result of a drug or alcohol testing program mandated by and conducted in accordance with such law . . . ." General Statutes § 31-236 (a) (14). I begin with the ordinary meaning of the word "program," which is defined in this context as "a plan or system under which action may be taken toward a goal . . . ." Merriam-Webster's Collegiate Dictionary (11th Ed. 2003) p. 992. In applying that definition, I note that § 14-44k (c) provides in relevant part that "a person is disqualified from operating a commercial motor vehicle for one year if the commissioner finds that such person has refused to submit to a test to determine such person's blood alcohol concentration while operating any motor vehicle, *or has failed such a test when given, pursuant to the provisions of section 14-227b* . . . ." (Emphasis added.) See footnote 3 of

this dissenting opinion for a summary of § 14-227b. Section 14-44k (c) thus operates in accordance with our state's driving while under the influence statutes and, primarily, the implied consent and blood alcohol testing scheme set forth in § 14-227b, by promoting the safe operation of commercial vehicles—many of which are heavier and intrinsically more hazardous to operate than are ordinary passenger cars.[6] This is particularly so given the fact that the legislature enacted § 14-227b to supplement the criminal penalties provided by General Statutes § 14-227a[7] and to provide a comprehensive scheme of action toward the "principal" public policy goal of "protect[ing] the public by removing potentially dangerous drivers from the state's roadways with all dispatch compatible with due process." *State* v. *Hickam*, 235 Conn. 614, 624, 668 A.2d 1321 (1995), cert. denied, 517 U.S. 1221, 116 S. Ct. 1851, 134 L. Ed. 2d 951 (1996), overruled in part on other grounds by *State* v. *Crawford*, 257 Conn. 769, 779–80, 778 A.2d 947 (2001), cert. denied, 534 U.S. 1138, 122 S. Ct. 1086, 151 L. Ed. 2d 985 (2002); see also *Fishbein* v. *Kozlowski*, 252 Conn. 38, 50, 743 A.2d 1110 (1999) ("[a]ny interpretation that prevented the commissioner [of motor vehicles] from suspending the license of a person who was stopped without a reasonable and articulable suspicion, but whom the police subsequently had probable cause to arrest for driving under the influence, would undermine the primary purpose of the statute"); cf. *McCoy* v. *Commissioner of Public Safety*, 300 Conn. 144, 168–70, 12 A.3d 948 (2011) (concluding that legislature intended second conviction of violating § 14-227a within ten year period to be felony because of lengthy legislative history indicating that, "over time, the legislature has adopted increasingly more severe punishments in an effort to discourage driving under the influence").

Put most simply, I would conclude that the comprehensive testing and license suspension procedure set forth in § 14-227b, and implemented in the commercial vehicle context by § 14-44k (c), constitutes "a plan or system under which action may be taken toward a goal"; Merriam-Webster's Collegiate Dictionary, supra, p 992; namely, mitigating "the horrors that result from drinking and driving, horrors to which we unfortunately have grown more accustomed . . . [i]n light of the staggering statistics concerning alcohol-related fatalities" on our state's roadways. (Footnote omitted.) *Craig* v. *Driscoll*, 262 Conn. 312, 337, 813 A.2d 1003 (2003). Further, that the blood alcohol testing under § 14-227b is not uniformly performed on all drivers, in contrast to the federally mandated drug testing of commercial vehicle drivers that the majority concludes satisfies § 31-236 (a) (14), is of no moment, as § 14-227b sets up a statutory scheme that nevertheless *applies uniformly to all* drivers in the state, with mandatory commercial vehicle disqualification under § 14-44k (c) following the failure of a blood alcohol test once administered by

a law enforcement officer. Moreover, contrary to the conclusion of the majority, there is nothing in the statutory language of § 31-236 (a) (14) that limits such testing programs to those actually administered by employers, meaning that the majority's interpretation runs afoul of the maxim that this court is "not permitted to supply statutory language that the legislature may have chosen to omit." (Internal quotation marks omitted.) *Dept. of Public Safety* v. *State Board of Labor Relations*, 296 Conn. 594, 605, 996 A.2d 729 (2010).

Moreover, with respect to the other elements of statutory interpretation under § 1-2z, the plain language of the statute applied in this manner does not yield an absurd result. To the contrary, by disqualifying such claimants from collecting unemployment benefits, it has the salutary effect in these difficult economic times of protecting private sector employers, many of which are small businesses,[8] from having their "experience accounts," which the defendant uses to calculate their unemployment insurance tax rates; see generally General Statutes § 31-225a; charged when the decision to terminate or suspend an employee was caused not by a business decision of the employer, but by a voluntary act of that employee, namely, consuming excessive amounts of alcohol before operating a motor vehicle, resulting in a mandatory license disqualification that renders him unable to perform the driving job for which he had been hired.[9]

Finally, I acknowledge the majority's reliance on the legislative history of § 31-236 (a) (14), the board's administrative interpretations of that statute that deem it inapplicable to employees who lose their commercial drivers' licenses as a result of off-duty incidents of driving while under the influence,[10] and the remedial nature of the act.[11] The statute is, however, plain and unambiguous without yielding an absurd result, meaning that I simply do not reach these secondary steps in the statutory interpretation process, notwithstanding the fact that "the primary purpose of the [act] was to relieve the distress of unemployment, and it has consistently been regarded as remedial in character and [is] to be construed liberally in regard to the beneficiaries," as "emphasized" by General Statutes § 31-274 (c), which provides that " 'this chapter shall be construed, interpreted and administered in such a manner as to presume coverage, eligibility and nondisqualification in *doubtful cases*.' " (Emphasis added.) *Robinson* v. *Unemployment Security Board of Review*, 181 Conn. 1, 24, 434 A.2d 293 (1980); see *Dept. of Public Safety* v. *State Board of Labor Relations*, supra, 296 Conn. 601 n.8 (declining to defer to agency interpretation of statute that was not time-tested and "is inconsistent with the plain language of the statute"); *Vincent* v. *New Haven*, 285 Conn. 778, 784 n.8, 941 A.2d 932 (2008) ("[W]e cannot say that the board's interpretation of [General Statutes] § 31-306 is sufficiently long-standing to war-

rant judicial deference, especially in view of the fact that the board has applied this interpretation only in two previous cases. . . . Moreover, because we conclude that the statute is not ambiguous, the board's interpretation would not prevail in any event." [Citations omitted.]); *State Medical Society* v. *Board of Examiners in Podiatry*, 208 Conn. 709, 719, 546 A.2d 830 (1988) (affording "deference to . . . time-tested agency interpretation of a statute, but only when the agency has consistently followed its construction over a long period of time, the statutory language is ambiguous, and the agency's interpretation is reasonable"). I, therefore, conclude that our driving while under the influence statutes constitute "a drug or alcohol testing program mandated by and conducted in accordance with such law" for purposes of disqualifying the claimant from collecting unemployment benefits pursuant to § 31-236 (a) (14).

I would, therefore, reverse the judgment of the Appellate Court and remand this case to that court with direction to reverse the judgment of the trial court and to direct judgment sustaining the plaintiff's administrative appeal from the decision of the board.

Accordingly, I respectfully dissent.

[1] General Statutes § 14-44a (a) provides: "No person may drive a commercial motor vehicle on the highways of this state unless the person holds a commercial driver's license issued by this state or another state, with applicable endorsements valid for the vehicle he is driving."

[2] General Statutes § 14-44k provides in relevant part: "(a) A driver who is disqualified or subject to an out-of-service order shall not drive a commercial motor vehicle. An employer shall not knowingly permit or require a driver who is disqualified to drive a commercial motor vehicle. . . .

"(c) In addition to any other penalties provided by law, and except as provided in subsection (d) of this section, a person is disqualified from operating a commercial motor vehicle for one year if the commissioner finds that such person has refused to submit to a test to determine such person's blood alcohol concentration while operating any motor vehicle, or has failed such a test when given, pursuant to the provisions of section 14-227b or pursuant to the provisions of a law of any other state that is deemed by the commissioner to be substantially similar to section 14-227b. For the purpose of this subsection, a person shall be deemed to have failed such a test if, when driving a commercial motor vehicle, the ratio of alcohol in the blood of such person was four-hundredths of one per cent or more of alcohol, by weight, or if, when driving any other motor vehicle, the ratio of alcohol in the blood of such person was eight-hundredths of one per cent or more of alcohol, by weight. . . ."

Although several technical changes not relevant to this appeal were made to § 14-44k; see, e.g., Public Acts 2010, No. 10-110, § 3; for purposes of clarity and convenience, I refer to the current revision of the statute.

[3] Because of its great length, and the fact that the meaning of its language is not directly at issue in this appeal, like the majority, I summarize § 14-227b rather than quoting it directly. See footnote 9 of the majority opinion. Specifically, § 14-227b (a) provides for motorists' implied consent to "a chemical analysis of such person's blood, breath or urine and, if such person is a minor, such person's parent or parents or guardian shall also be deemed to have given their consent."

Subsection (b) sets forth a procedure under which police officers having arrested a person "for operating a motor vehicle while under the influence of intoxicating liquor or any drug or both" shall request motorists to submit to "a blood, breath or urine test at the option of the police officer," including advising them of the consequences of refusing or failing the test.

Subsection (c) provides for the immediate suspension, for a twenty-four hour period, of a motorist's license or nonresident operating privileges upon the motorist's refusal to submit to, or failure of, the chemical test

administered within two hours of operation, with reporting to the Commissioner of Motor Vehicles (commissioner); subsection (d) modifies that procedure for tests requiring laboratory analysis.

Subsection (e) sets forth the commissioner's authority to suspend the motorist's license or nonresident operating privileges subject to the provision of a hearing, at the motorist's request, before the commissioner. Subsection (f) provides that the motorist's failure to request a hearing will result in the license suspension being upheld for the statutorily designated periods. Subsections (g) and (h) set forth the hearing and decision procedure. Subsections (i) and (j) set forth the applicable suspension periods, the length of which are determined, inter alia, by whether the motorist refused or failed the test, and the motorist's blood alcohol content, age, and prior record.

Subsection (k) sets forth the procedure applicable when a police officer obtains the results of a chemical analysis taken in connection with hospital treatment of a motorist. Subsection (*l*) renders § 14-227b applicable to a motorist's refusal "to submit to an additional chemical test" as provided by General Statutes § 14-227a (b) (5). Subsection (m) renders § 14-227b inapplicable to "any person whose physical condition is such that, according to competent medical advice, such test would be inadvisable."

Subsection (n), requires the state to "pay the reasonable charges of any physician who, at the request of a municipal police department, takes a blood sample for purposes of a test under the provisions of this section."

Subsection (o) defines " 'elevated blood alcohol content' " for purposes of § 14-227b as "(1) a ratio of alcohol in the blood of such person that is eight-hundredths of one per cent or more of alcohol, by weight, (2) if such person is operating a commercial motor vehicle, a ratio of alcohol in the blood of such person that is four-hundredths of one per cent or more of alcohol, by weight, or (3) if such person is less than twenty-one years of age, a ratio of alcohol in the blood of such person that is two-hundredths of one per cent or more of alcohol, by weight."

Finally, subsection (p) requires the commissioner to "adopt regulations, in accordance with chapter 54, to implement the provisions of this section."

Although several technical changes not relevant to this appeal were made to § 14-227b; see, e.g., Public Acts 2008, No. 08-32, § 1; for purposes of clarity and convenience, I refer to the current revision of the statute.

[4] General Statutes § 31-236 (a) provides in relevant part: "An individual shall be ineligible for benefits . . .

"(14) If the administrator finds that the individual has been discharged or suspended because the individual has been disqualified under state or federal law from performing the work for which such individual was hired as a result of a drug or alcohol testing program mandated by and conducted in accordance with such law, until such individual has earned at least ten times such individual's benefit rate . . . ."

[5] I note my agreement with the majority's observation that certain aspects of the plaintiff's briefing in this case are, in a word, "troubling." See footnote 16 of the majority opinion. Specifically, I agree with the majority's assessment, as unfounded, of the plaintiff's contentions that the board has "never applied" § 31-236 (a) (14), and that the defendant "ignore[s]" the statute in its briefing of this appeal and cites no cases applying it. As is reflected in the majority's opinion, the defendant's brief accurately cites a series of decisions of the board applying § 31-236 (a) (14) in a manner consistent with its decision in the present case; these decisions are freely and rapidly obtainable through the research section of the board's website. See cases cited in footnote 10 of this dissenting opinion.

I also disagree with the plaintiff's apparent, and somewhat surprising, argument that *only* the driving while under the influence statutes constitute a "program" under § 31-236 (a) (14). I fully agree with the majority that the employer based drug and alcohol testing program mandated by the federal government for commercial vehicle operators, implemented in Connecticut by General Statutes § 14-261b (b), is indeed such a "program" under § 31-236 (a) (14). Where I part company from the majority is in its conclusion that our state's statutory scheme governing driving while under the influence is *not* included as such a "program" under § 31-236 (a) (14), the plain meaning of which I read more inclusively.

[6] Indeed, the statutory language of our driving while under the influence statutes reflects the greater risk inherent in the operation of commercial vehicles, as the blood alcohol test failure threshold for those who are alleged to have operated commercial vehicles while under the influence is 50 percent less than operators of other vehicles. See General Statutes § 14-44k (c); General Statutes § 14-227a (a); General Statutes § 14-227b (o); see also foot-

notes 2, 3, and 7 of this dissenting opinion.

[7] Because § 14-227a, like § 14-227b, is of great length and does not contain language directly at issue in this appeal, like the majority; see footnote 8 of the majority opinion; I briefly summarize some of the language of this statute rather than quoting it directly. General Statutes § 14-227a (a) provides: "No person shall operate a motor vehicle while under the influence of intoxicating liquor or any drug or both. A person commits the offense of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if such person operates a motor vehicle (1) while under the influence of intoxicating liquor or any drug or both, or (2) while such person has an elevated blood alcohol content. For the purposes of this section, 'elevated blood alcohol content' means a ratio of alcohol in the blood of such person that is eight-hundredths of one per cent or more of alcohol, by weight, except that if such person is operating a commercial motor vehicle, 'elevated blood alcohol content' means a ratio of alcohol in the blood of such person that is four-hundredths of one per cent or more of alcohol, by weight, and 'motor vehicle' includes a snowmobile and all-terrain vehicle, as those terms are defined in section 14-379."

Subsections (b) and (c) set forth the procedures governing the admissibility into evidence of the defendant's blood chemical analysis in criminal prosecutions for a violation of § 14-227a (a). Subsection (d) requires the Commissioner of Emergency Services and Public Protection to "ascertain the reliability of each method and type of device offered for chemical testing and analysis purposes of blood, of breath and of urine and certify those methods and types which said commissioner finds suitable for use in testing and analysis of blood, breath and urine, respectively, in this state," and to adopt appropriate implementing regulations. Subsection (e) renders a defendant's refusal to submit to "a blood, breath or urine test requested in accordance with section 14-227b . . . admissible provided the requirements of subsection (b) of said section have been satisfied," and requires a jury instruction "as to any inference that may or may not be drawn from the defendant's refusal to submit to a blood, breath or urine test."

Subsections (f), (g), (h), (i), (j) and (*l*) govern the disposition of prosecutions under § 14-227a (a). Specifically, subsection (f) provides that a charge under § 14-227a (a) "may not be reduced, nolled or dismissed unless the prosecuting authority states in open court such prosecutor's reasons for the reduction, nolle or dismissal." Subsection (g) then provides for a variety of criminal penalties, including fines, imprisonment, probation, alcohol treatment, and license suspensions or revocations, depending on a defendant's age and prior record. Subsection (h) provides for the implementation of license suspensions or revocations by the Commissioner of Motor Vehicles (Commissioner) upon receipt of notification from the court of convictions. Subsection (i) provides for the Commissioner to permit defendants who have served criminal, but not administrative license suspensions under § 14-227b, to operate motor vehicles, for limited purposes, subject to the installation of an ignition interlock device, and sets forth procedures for the installation and maintenance of such devices. Subsection (j) authorizes the court to order defendants to participate in an "alcohol education and treatment program" in addition to any fine or sentence imposed under § 14-227a (g). Finally, subsection (*l*) authorizes the court to require a defendant convicted of violating § 14-227a (a) to participate in a victim impact panel as a condition of probation.

Subsection (k) governs the seizure and admissibility of blood alcohol or drug evidence from samples taken in connection with the medical treatment of a defendant, including the requirement that a judge issue a search warrant for such samples and a defendant's medical records.

Like the majority, I note that § 14-227a has been amended several times since the facts underlying the present appeal. See, e.g., Public Acts 2009, No. 09-187, §§ 42, 62, 66. Consequently, for purposes of clarity and convenience, I refer to the current revision of the statute.

[8] As the defendant points out, an employer is not *obligated* under § 14-44k to terminate or suspend an employee because of the loss of his commercial driver's license, but merely is forbidden from permitting him to drive a commercial vehicle. That said, as a practical reality, it likely would be a significant hardship for many small businesses to maintain an employee, otherwise legally disqualified from performing the driving job that he was hired to do, on the payroll while also paying a replacement or substitute to perform that employee's driving tasks.

[9] I, therefore, agree with the majority, insofar as it "seriously question[s] whether the state's provision of benefits to an individual who loses his

occupationally required license for operating under the influence, and the imposition of the cost of those benefits on an innocent employer, are consistent with Connecticut's strong public policy against driving while under the influence . . . ." I urge the legislature to act to address this inequity, bearing in mind the potentially disastrous costs to an unemployed person's often equally innocent family occasioned by disqualification from unemployment benefits, particularly when compounded with the loss of employment and the attendant costs of defending against an accompanying criminal prosecution. See *Yardville Supply Co.* v. *Board of Review, Dept. of Labor*, 114 N.J. 371, 381, 554 A.2d 1337 (1989) (O'Hern, J., dissenting) ("Is it better policy that the worker's family be made to pay indefinitely to advance the enforcement of drunk-driving laws, or is the policy against drunk driving sufficiently advanced by the criminal sanctions without the additional loss of the breadwinner's contribution?").

To this end, I note that, in the 2012 legislative session, the General Assembly's Labor and Public Employees Committee reported a proposed amendment to § 31-225a that would have allowed the payment of unemployment benefits while precluding employers' experience accounts from being charged in situations like that in the present case, when an "individual has been disqualified under state or federal law from performing the work for which such individual was hired as a result of a suspension or revocation of such individual's commercial driver's license . . . ." Substitute Senate Bill No. 149, 2012 Sess., § 1. That bill did not receive subsequent consideration by the full legislature. I further note that Senate Bill No. 149 reflected a change from an earlier version of the bill that would have amended § 31-236 (a) (14) to clarify, consistent with my interpretation of the existing statutory language, that claimants like that in the present case are disqualified from collecting unemployment benefits; Raised Bill No. 149, 2012 Sess., §1; the substitute bill instead rendered such benefits nonchargeable to the employer's experience account under § 31-225a. See Substitute Senate Bill No. 149, 2012 Sess., § 1.

Because of the myriad of reasons that this bill could have failed to receive a vote by the full legislature, I do not, however, ascribe any interpretative significance to the failure of this proposed legislation. See, e.g., *State* v. *Salamon*, 287 Conn. 509, 526 n.14, 949 A.2d 1092 (2008); see also *Conway* v. *Wilton*, 238 Conn. 653, 680, 680 A.2d 242 (1996) ("[r]ather than draw inferences from the judiciary committee's decision to recommend the amendments or, conversely, draw inferences from the failure of the bill to reach the floor of either chamber, we conclude that the four years' worth of silence is not sufficiently unambiguous and longstanding to overcome the other sound reasons for our conclusion to overrule *Manning* [v. *Barenz*, 221 Conn. 256, 603 A.2d 399(1992)]").

[10] See *Haas* v. *USA Hauling & Recycling, Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 861-BR-09 (July 28, 2009); *Saltarella* v. *A & B Auto Salvage, Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 862-BR-09 (July 24, 2009); *Deane* v. *Pace Air Services, Inc.*, Dept. of Labor, Employment Security Appeals Division, Board of Review Case No. 222-BR-00 (March 29, 2000).

Query, however, whether these three board decisions over a period of fourteen years since the 1995 enactment of the statute constitute a "time-tested interpretation" of § 31-236 (a) (14) subject to any deference from this court. Compare, e.g., *Stec* v. *Raymark Industries, Inc.*, 299 Conn. 346, 357, 10 A.3d 1 (2010) ("numerous" agency decisions over thirty years, some of which had received review by trial and Appellate Court, constituted time-tested interpretation), and *Curry* v. *Allan S. Goodman, Inc.*, 286 Conn. 390, 405, 944 A.2d 925 (2008) (thirteen agency decisions over "at least . . . twelve years," some of which had been subjected to judicial review, constituted time-tested interpretation), with *Dept. of Public Safety* v. *State Board of Labor Relations*, supra, 296 Conn. 600–601 (agency interpretation was not time-tested and entitled to deference when agency only had applied interpretation twice over seventeen years and interpretation had not been subject to judicial review).

[11] I do not find instructive the defendant's heavy reliance on § 31-236 (a) (2) (B), which disqualifies an individual from unemployment benefits "if, in the opinion of the administrator, the individual has been discharged or suspended for . . . *wilful misconduct in the course of the individual's employment* . . . ." (Emphasis added.) See also Regs., Conn. State Agencies § 31-236-36c (a) (defining "in the course of employment"). The defendant properly notes that, under our statutes, this disqualifier is narrowly interpreted and applied with respect to off-duty misconduct. I agree with the defen-

dant and the majority that the legislature could have used broader language such as "connected with" the course of the individual's employment had it desired § 31-236 (a) (2) (B) to be more expansive with respect to disqualifying off-duty conduct such as driving while under the influence. (Internal quotation marks omitted.) Cf. *Look* v. *Maine Unemployment Ins. Commission*, 502 A.2d 1033, 1034 (Me. 1985) (driving under influence leading to suspension of telephone company employee's required driver's license constituted " 'misconduct connected with his work' "); *Markel* v. *Circle Pines*, 479 N.W.2d 382, 384 (Minn. 1992) (utility worker's off-duty driving under influence resulting in loss of required driver's license was disqualifying under statute applicable when "the individual was discharged for misconduct, not amounting to gross misconduct connected with work or for misconduct which interferes with and adversely affects employment" [internal quotation marks omitted]); *Rasmussen* v. *South Dakota Dept. of Labor*, 510 N.W.2d 655, 657–58 (S.D. 1993) (off-duty driving under influence resulting in truck driver's loss of commercial driver's license was "work-connected misconduct" disqualifying him from unemployment benefits). Having said that, this more generally phrased statutory disqualification simply is not at issue in the present case and, in my view, fails to inform this discussion one way or the other. Rather, I focus on § 31-236 (a) (14), which is more narrowly tailored to the events at issue in this appeal.

Similarly, I acknowledge that sister state cases applying the "constructive quit doctrine" to deny unemployment benefits to those who have lost their driving jobs as a result of license loss occasioned by off-duty driving while under the influence, are inapposite. See *Yardville Supply Co.* v. *Board of Review*, *Dept. of Labor*, 114 N.J. 371, 375, 554 A.2d 1337 (1989) ("The issue here is whether a truck driver whose decision to drink and drive resulted in the loss of his driver's license, a prerequisite to his employment, has left work voluntarily without good cause . . . . We hold that he has. Because of his actions, [the employee] is no longer able to do the job that he was hired to do."); *In the Matter of Ramirez*, 84 App. Div. 3d 1656, 1657, 922 N.Y.S.2d 882 (2011) (upholding decision that truck driver who lost his commercial driver's license following a citation for driving with ability impaired was disqualified from receiving unemployment benefits "on the basis that he voluntarily separated from his employment without good cause" because employee "provoked his discharge by engaging in the voluntary act of driving a motor vehicle while under the influence of alcohol, which resulted in his loss of a necessary qualification of his employment, a commercial driver's license" [internal quotation marks omitted]). As the majority accurately notes, Connecticut courts previously have deemed the constructive quit doctrine to be incompatible with the language and purpose of the act; see *Lewis* v. *Administrator*, *Unemployment Compensation Act*, 39 Conn. Supp. 371, 373–74, 465 A.2d 340 (App. Sess. 1983); *Bertini* v. *Administrator*, *Unemployment Compensation Act*, 39 Conn. Supp. 328, 331–32, 464 A.2d 867 (App. Sess. 1983); the plaintiff does not challenge the vitality of those decisions in this appeal.