

## VIRGINIA WORKERS' COMPENSATION LAW

- As of July 1, 2011 – [www.tworiverslawgroup.com](http://www.tworiverslawgroup.com)

### Workers' Compensation Attorney Team

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### Time Periods

|   |                                    |
|---|------------------------------------|
| Employer's First Report of Injury - FROI (§65.2-900).....           | 10 days from knowledge of accident |
| Waiting Period (§65.2-509) .....                                    | 7 days                             |
| Waiting Period Recoverable after Disability Exceeds (§65.2-509).... | 21 days                            |
| Notice to Employer (§65.2-600 (D)).....                             | 30 days                            |

### Statutes of Limitation

|   |         |
|---|---------|
| File Initial Claim (§65.2-601) .....                      | 2 years |
| Change in Condition (§65.2-708) .....                     | 2 years |
| Change in Condition (permanency claims) (§65.2-708) ..... | 3 years |
| TT or TP after PPD award ends (§65.2-501) .....           | 1 year  |
| Unless actual change in condition (§65.2-708) .....       | 2 years |
| Appeal to Full Commission (§65.2-705).....                | 30 days |
| Appeal to Virginia Court of Appeals (§65.2-706).....      | 30 days |

### Compensable "Injuries"

Injury by accident arising out of the course of employment, which includes acceleration or aggravation of pre-existing injury. (§65.2-101). Virginia has adopted the "actual risk test" which requires that the employment expose the worker to the particular danger, which causes the injury.

### Compensable "Diseases"

Occupational diseases are those arising out of the course of employment, but not an ordinary disease of life to which the general public is exposed. (§65.2-400). Examples of occupational diseases include asbestosis and pneumoconiosis.

Ordinary diseases of life are diseases to which the general public is exposed. These diseases are compensable only if the claimant can prove by *clear and convincing* evidence that disease arose out of the course of employment. (§65.2-401). Examples of ordinary diseases of life include carpal tunnel syndrome and hearing loss.

### Medical Benefits

An employer/carrier must furnish medical treatment, causally related to the compensable accident, provided by the injured employee's treating physician for as long as necessary. The employee should choose his treating physician from a panel of at least three physicians provided by the employer. (§65.2-603)

### Medical Examinations

So long as an employee claims compensation, the employer may request that the employee attend examinations by duly qualified physicians at reasonable times and places. The employee's refusal to comply with such examinations may suspend compensation rights until such refusal is cured. (§65.2-607)

### Medical Records

When a hearing request is filed with the Commission, both parties shall exchange all medical records in their possession, and each party shall send to the Commission only those medical records in their possession that are pertinent to the request once the case is referred to the docket.

A medical care provider attending an injured employee shall, upon request from an employer or an employee, furnish a copy of required reports, at no cost except for a nominal copying charge.

A medical care provider is entitled to a reasonable fee for preparation of a narrative report written in response to a request from a party if the report requires significant professional research or preparation.

### Panel of Physicians

As soon as possible after the injury, an employee should be provided with a panel of physicians. Otherwise the employee may seek treatment from the doctor of his choice. The panel must have at least three unaffiliated physicians. (§65.2-603)

### Average Weekly Wage

The injured employee's actual wages during the 52 week period preceding the date of injury, divided by 52. If the injured employee worked less than 52 weeks, divide the total earned by the number of weeks worked. (§65.2-101)

### Death Benefits

If death results from the accident within nine years, the employer/carrier is responsible for compensation at 66 2/3% of the deceased employee's average weekly wage for a period not exceeding 500 weeks for total dependents or 400 weeks for partial dependents. The employer/carrier may also bear responsibility for burial expenses not exceeding \$10,000.00 and the deceased's transportation expenses not exceeding \$1,000.00. (§65.2-512)

### Autopsy

In any case of death, the employer or the Commission may require an autopsy. The requesting party is responsible for expenses. (§65.2-607)

### Willful Misconduct

The employer/carrier can avoid payment of a claim if the injury resulted from the employee's willful misconduct. (§65.2-306). However, the employer/ carrier must provide written notice of intent to rely upon this defense at least 15 days prior to hearing. (Commission Rule 1.10)

### Indemnity Benefits

#### Temporary Total Disability (§65.2-500)

When incapacity from work is total, the employer shall pay 66 2/3 % of average weekly wage (AWW) not below minimum and not to exceed maximum state rate. 500 week limitation. (§65.2-518)

#### Temporary Partial Disability (§65.2-502)

When incapacity from work is partial, the employer shall pay 66 2/3% of the difference between the AWW before the injury and amount the claimant is able to earn after the injury. 500 week limitation. (§65.2-518)

#### Permanent Partial Disability (§65.2-503)

Awarded for scheduled losses for the period specified at 66 2/3% of the AWW. Payable after completion of temporary total disability benefits or simultaneously with temporary partial disability benefits. These payments are subject to the 500 week limitation and, if combined with temporary partial payments, each combined payment counts as two weeks of compensation. (§65.2-518)

#### Permanent Total Disability (§65.2-503)

Awarded for loss of two scheduled members in the same accident, injury resulting in total paralysis, or brain injury rendering the employee permanently unemployable in gainful employment. Lifetime award without 500 week limitation.

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### Fractional Weeks

|                 |     |
|-----------------|-----|
| One Day-----    | .14 |
| Two Days-----   | .29 |
| Three Days----- | .43 |
| Four Days-----  | .57 |
| Five Days-----  | .71 |
| Six Days-----   | .86 |

### Maximum/Minimum Compensation

|                        |                   |
|------------------------|-------------------|
| Effective July 1, 2011 | \$905.00/\$226.25 |
| Effective July 1, 2010 | \$885.00/\$221.25 |
| Effective July 1, 2009 | \$895.00/\$223.75 |
| Effective July 1, 2008 | \$841.00/\$210.25 |
| Effective July 1, 2007 | \$816.00/\$204.00 |
| Effective July 1, 2006 | \$773.00/\$193.25 |
| Effective July 1, 2005 | \$736.00/\$184.00 |
| Effective July 1, 2004 | \$706.00/\$176.50 |
| Effective July 1, 2003 | \$691.00/\$172.75 |

### Penalty for Late Payment of Compensation

The Commission imposes a 20% penalty of compensation paid more than two weeks after it becomes due after entry of an award. The penalty does not apply, however, until more than two weeks after the time expires to appeal an award to the full Commission, the Court of Appeals or Supreme Court (§65.2-524).

### Scheduled Injuries (§65.2-503)

| <u>Bodily Loss</u>                 | <u>Max. Weeks</u> |
|------------------------------------|-------------------|
| Thumb.....                         | 60                |
| First Finger (index finger).....   | 35                |
| Second Finger.....                 | 30                |
| Third Finger.....                  | 20                |
| Fourth Finger.....                 | 15                |
| Great toe.....                     | 30                |
| Any other toe.....                 | 10                |
| Hand.....                          | 150               |
| Arm.....                           | 200               |
| Foot.....                          | 125               |
| Leg.....                           | 175               |
| Eye (vision).....                  | 100               |
| Hearing (one ear).....             | 50                |
| Severely marked disfigurement..... | 60                |
| Pneumoconiosis (first stage).....  | 50                |
| Pneumoconiosis (second stage)..... | 100               |
| Pneumoconiosis (third stage).....  | 300               |
| Byssinosis.....                    | 50                |

### Home and Automobile Modifications

Effective with accidents on and after July 1, 2011, modifications to equipment for an automobile are included with modifications of the employee's principal home and other medical equipment, with the aggregate maximum raised to \$42,000, an increase from the prior limit of \$25,000 in place as of July 1, 1990.

### Commission Information and Telephone Numbers

Virginia Workers' Compensation Commission  
 1000 DMV Drive  
 Richmond, VA 23220 / Website: [www.vwc.state.va.us](http://www.vwc.state.va.us)

#### VWCC Richmond Offices:

Call Center / Customer Assistance (877) 664-2566 Fax: (804) 367-9740  
 Employer's Insurance Monitoring (804) 205-3586  
 Self-insurance Program (804) 367-2193 Fax: (804) 367-6124

*Note: All questions should be directed to the Call Center*

### Forms

|                |  |
|----------------|--|
| Form 5.....    | Initial Claim for Benefits               |
| Form 5-A.....  | Employer's Application for Hearing       |
| Form 5-B.....  | Request for Expedited Hearing            |
| Form 4.....    | Award Agreement                          |
| Form 46.....   | Termination of Wage Loss Award           |
| Form 3.....    | Employer's First Report of Injury - FROI |
| Form 7.....    | Amputation Chart (Foot & Hand)           |
| Form 7-A.....  | Wage Chart                               |
| Form 35.....   | Fatal Award Agreement                    |
| Form 6.....    | Attending Physician's Report             |
| Form CA51..... | COLA Request Form                        |

### For Information on EDI visit:

<http://www.vwc.state.va.us/portal/vwc-website/OnlineServices/EDIServices>

### Terminating Awards

After entry of an award by the Commission, the employer/carrier must take proactive steps to terminate that award. Initially, the carrier/employer should send a Termination of Wage Loss Award form (Form 46) to the claimant for signature. However, if the claimant will not comply, or the situation otherwise demands, the carrier/employer should immediately file an Employer's Application (Form 5-A; Commission Rule 1.4; §65.2-708). The carrier/employer should take such action when:

- The claimant returns to pre-injury work;
- The claimant is released to return to pre-injury work by a treating physician;
- The claimant returns to light duty work;
- Medical records indicate that the claimant's continuing disability is unrelated to the work accident; must allege continuing disability is non-related;
- The claimant fails to report to an employer-requested medical examination, or otherwise refuses to cooperate with medical treatment;
- The claimant refuses selective employment (employer/carrier procured) within his or her physical capabilities;
- The claimant refuses to cooperate with reasonable vocational rehabilitation efforts;
- The claimant fails to report a change of address to the Commission (file to suspend benefits under the outstanding award).
- The employer/carrier wants to request modification (and possibly a credit for overpayments made) of an outstanding award because it does not reflect the claimant's correct average weekly wage under §65.2-101;
- The claimant fails to report a change as required by §65.2-712. These changes include incarceration, changes in earnings, remarriage, or changes in student status.

### Mileage

Effective July 1, 2011, the rate for mileage reimbursement for a claimant's travel to and from medical appointments is 50.5¢ per mile. The prior rate was 44.5¢ per mile.

#### VWCC Regional Offices:

Fairfax (703) 207-7152  
 Harrisonburg (540) 433-7701  
 Lebanon (276) 889-7644  
 Manassas (703) 257-7994  
 Roanoke (540) 776-2700  
 Virginia Beach (757) 552-1117