

VIRGINIA

EMPLOYMENT LAW

Workers' Compensation – Employee Benefits



Workers' compensation is a system of no-fault insurance that provides monetary compensation and medical benefits to employees, or their survivors, for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

The Virginia Workers' Compensation Act (WCA) establishes the benefits available to employees who are injured in the course and scope of employment in the state. The [Virginia Workers' Compensation Commission](#) (Commission) oversees and handles all workers' compensation claims in Virginia.

STATE RESOURCES

Virginia Workers' Compensation Commission [website](#)

Law Text

Text of the Virginia Workers' Compensation Act is available [here](#).

Workplace Poster

Employers can use this [notice](#) to satisfy their posting requirements.

Employer Forms

Links to workers' compensation forms for employers are available [here](#).

ELIGIBILITY

In general, to be eligible for workers' compensation benefits, an individual must:

- Be a **covered employee** (as defined by the WCA) or be an eligible dependent in cases involving an employee's work-related death; and
- Sustain a **compensable condition**.

Compensable conditions include injuries, diseases and deaths that arise out of and in the course of employment.

The benefits an individual may receive depend on, among other factors, the date of injury. This is usually the day on which a work-related accident occurred. For occupational diseases, the "date of injury" is the date on which the employee first received a diagnosis of the disease.

Unless otherwise specified, this document uses "injury" to refer to both accidental injuries and occupational diseases. Because the WCA includes special rules for cases involving coal worker's pneumoconiosis, however, some references to an "injury" may not include that specific condition.

MEDICAL CARE BENEFITS

Employers are required to furnish a physician and pay for all necessary medical care to treat an employee's work-related injury. This includes all necessary surgical and hospital services. All medical expenses must be covered for as long as necessary after an accidental injury takes place. For occupational diseases, an employer's liability for medical expenses begins **15 days before** the date of injury.

When an accident results in certain specified losses, an employer also must cover the



cost of prosthetic, orthotic and other medical appliances, such as wheelchairs, canes and crutches, along with the costs of fitting and training the employee for their use. The work-related conditions for which this requirement applies include:

- Amputation or loss of use of an arm, hand, leg or foot;
- Enucleation of an eye;
- Loss of any natural teeth; or
- Loss of hearing.

If an employee is awarded benefits for the incapacity to work, the employer may be also be required to pay **up to \$42,000** for any car or home modifications that the employee's treating physician deems necessary.

All amounts an employer must pay for medical care are subject to limits based on the prevailing charges in the community for similar treatment. The WCA also provides specified limits for certain services, such as surgery assistance by nurse practitioners, physicians' assistants and assistant surgeons.

MONETARY BENEFITS – CALCULATIONS

If an employee cannot return to work or sustains a permanent impairment due to a work-related injury, he or she may be entitled to receive compensation in the form of weekly monetary payments. These payments are often referred to as disability or indemnity benefits. Monetary benefits are immune from wage assignments and creditor claims, except in certain cases involving child or spousal support.

AVERAGE WEEKLY WAGE

An employee's monetary benefit rates are calculated as percentages of the average weekly wages (AWW) he or she earned at the time of a work-related injury.

The AWW is usually determined by taking the employee's total earnings from the employer during the 52 weeks before the injury and dividing it by 52. If the employee did **not** work for the employer for 52 or more weeks before the injury, the AWW is determined by taking the total earnings over the course of the worker's employment and dividing it by the number of weeks of employment.

Other calculations may apply if:

- The casual nature or shortness of the employment makes it impractical to use the above methods;
- The above methods would be unfair for exceptional reasons; or
- The employee lost more than seven consecutive calendar days of wages during the 52-week period before the injury.

In calculating the AWW, the employee's total earnings must include "allowances of any character" made in lieu of wages, as long as they were a specified part of the wage contract.

BENEFIT LIMITS

An employee's weekly benefit rates are subject to limits based on the date of injury. New limits become effective as of **July 1** each year. These limits are based on the average weekly wages that all insured employees in the state earned during the previous year.



Except in cases where an employee is permanently and totally disabled, and except in certain cases involving coal worker's pneumoconiosis, monetary benefits are also subject to an aggregate limit of either **500 weeks** or a monetary amount that is 500 times the maximum rate limit for the year in which the injury occurred (whichever is reached first).

The following table outlines the current and most recent benefit rate and aggregate limits.

Date of injury	Maximum Weekly Benefit Rate	Minimum Weekly Benefit Rate	Maximum Total Benefits (other than permanent total disability)
July 1, 2019 – June 30, 2020	\$1,120.00	\$275.50	\$560,000
July 1, 2018 – June 30, 2019	\$1,082.00	\$270.50	\$541,000
July 1, 2017 – June 30, 2018	\$1,043.00	\$260.75	\$521,500

WAITING PERIOD

Injured employees are not eligible to receive monetary benefits for **the first seven days** of their disability. This includes the date of injury, if the employee's wages for the entire day were not paid, even if the injury occurred later in the day. However, if the injury results in **more than three weeks** of disability, benefits for the first seven days must be paid retroactively. This includes any days or parts of a day that the employee is not able to or does not earn a full day's wages.

TEMPORARY DISABILITY BENEFITS

Under the WCA, an injured employee is entitled to receive weekly temporary disability benefits to compensate for lost wages resulting from the injury while the employee is recovering. However, an employee who refuses an employer's offer of work that is suitable to his or her capacity is **not** eligible for temporary disability benefits during the refusal.

TEMPORARY TOTAL DISABILITY (TTD)

Employers must provide TTD benefits for an employee who, due to a work-related injury, is:

- Completely unable to work; or
- Partially unable to work and the employer cannot provide any work suitable to the employee's capacity (under these particular circumstances, however, TTD benefits are only payable if the employee is otherwise eligible for lawful employment).

Weekly TTD benefits are **66 and two-thirds percent** of the employee's AWW, subject to the limits described above.

TEMPORARY PARTIAL DISABILITY (TPD)

An employee may be entitled to receive TPD benefits if the effects of a work-related injury cause him or her to lose only a portion of his or her pre-injury wages during the recovery period. This may be due to the employee's need, as determined by the treating physician, to work reduced hours or to perform a job for which the employee receives reduced wages from the employer. An employee must be otherwise eligible for lawful employment in order to receive any TPD benefits.



TPD benefits are **66 and two-thirds percent of the difference** between the employee's AWW and the average wages the employee is able to earn per week thereafter, subject to the maximum rate limits and aggregate limit described above. An employee's post-injury AWW is usually calculated on a week-by-week basis.

PERMANENT DISABILITY BENEFITS

Employees are entitled to compensation for certain permanent effects of work-related injuries. The nature and extent of an employee's work-related condition determine the benefit amounts available for permanent disability.

PERMANENT PARTIAL DISABILITY (PPD)

PPD benefits are available to employees who have certain permanent physical losses or impairments after reaching maximum medical improvement (MMI) for a work-related injury.

The WCA includes a list of body parts and functions and assigns a number of weeks for each of them. When an employee's loss to any of these parts or functions is complete, he or she is entitled to receive PPD benefits for the full number of weeks assigned to the part or function in the WCA. A partial loss entitles the employee to a proportionate number of benefit weeks. The extent of an employee's permanent physical loss or impairment is determined by the treating physician.

The weekly PPD rate is **66 and two-thirds percent** of the AWW, subject to the limits described above.

PERMANENT TOTAL DISABILITY (PTD)

PTD benefits are payable if a work-related injury causes an employee's total inability to earn wages on a permanent basis. The following also constitute PTD under the WCA:

- Loss of both hands, both arms, both feet, both legs, both eyes, or any combination of two of them in the same accident;
- Injury, for all practical purposes, resulting in total paralysis, as determined by the Commission based on medical evidence; or
- Injury to the brain which is so severe as to render the employee permanently unemployable in gainful employment.

The weekly PTD benefit rate is **66 and two-thirds percent** of the AWW, subject to the weekly rate limits described above. PTD benefits may continue for the employee's lifetime and are not subject to any aggregate limit.

VOCATIONAL REHABILITATION BENEFITS

The Commission may require an employer to pay for reasonable and necessary vocational rehabilitation services for an injured employee. These services may include:

- Vocational evaluation;
- Counseling;
- Job coaching;
- Job development;
- Job placement;
- On-the-job training;



- Education; and
- Retraining.

DEATH AND BURIAL BENEFITS

If an employee's death results from a work-related related injury within **nine years**, the employer may be responsible for burial expenses of **up to \$10,000**, plus **up to \$1,000** in transportation expenses.

In addition, weekly death benefits are available to the employee's surviving spouse and dependents. Death benefits are generally **66 and two-thirds percent** of the injured employee's AWW, subject to the rate limits described above.

An employee's dependent spouse and children may receive up to **500 weeks** of death benefits. However, a surviving spouse's eligibility for death benefits ceases upon remarriage, and children's eligibility ceases upon reaching age 18 or age 23 for full-time students. Children who are physically or mentally incapacitated from earning a livelihood after reaching those ages remain eligible for benefits up to the 500-week limit.

If a deceased employee had no spouse or children, benefits may be paid to his or her parents or to any individuals who were partially dependent on the employee for up to 400 weeks.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the Commission [website](#) for more information on workers' compensation laws in Virginia.