

EMPLOYMENT LAW SUMMARY

Virginia Workers' Compensation - Claims Process



Because You're Different

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 process for handling workers' compensation claims in the state. The Virginia Workers' Compensation Commission (Commission), investigates and handles workers' compensation claims. The processing of a claim typically begins with a notice of injury and may end up in administrative or judicial appeal.

EMPLOYEE'S REPORT OF INJURY

Employees must provide written notice of any work-related accident to their employers.

Employees who do not provide written notice **immediately** or as soon as practicable after an accident may lose any benefits that would otherwise accrue from the accident until the employee provides the notice. Failure to provide immediate written notice is excusable if the employer had knowledge of the accident or if the employee could not give notice due to physical or mental incapacity or due to a third person's fraud or deceit.

Employees who do not provide written notice **within 30 days** of an accident may lose their rights to compensation altogether. Failure to provide written notice within 30 days of an accident is excusable only if the employee had a reasonable excuse and the employee was not prejudiced by the failure, both as determined by the Commission.

For occupational diseases, an employee's written notice is due **within 60 days** after the diagnosis of the disease is first communicated to the employee. An employee's failure to provide this notice does not affect the employee's right to seek compensation for the disease unless the failure resulted in clear prejudice to the employer.

EMPLOYER'S REPORT OF INJURY AND CLAIM ADMINISTRATION

Employers must file a first report of injury with the Commission **within 10 days** after an employee injury or death occurs or after first having knowledge of an occupational disease. The filing period is extended to **60 days** for minor injuries.

Employers must also file reports with the Commission (for claims that do not involve a minor injury) any time they:

- Deny an employee's claim;
- Make payments to an employee for a claim;
- Make payments to medical providers for an employee's claim; and
- Stop making payments to an employee or medical providers for an employee's claim.

EMPLOYEE'S CLAIM FOR BENEFITS

To preserve any rights under the WCA, an employee must file a claim for benefits with the Commission **within two years** after a work-related accident or after receiving a diagnosis of an occupational disease (or within five years of the last injurious exposure to the disease in employment, if this occurs first).

If an employee dies as a result of a work-related accident or occupational disease, dependents must file a claim within two years from the date of death, and benefits are only payable if a claim for benefits was filed within two years after the accident.

Other claim-filing deadlines may apply for cases involving:

- Coal miners' pneumoconiosis;
- Byssinosis;
- Asbestosis;
- Symptomatic or asymptomatic infection with human immunodeficiency virus (HIV) including acquired immunodeficiency syndrome (AIDS); and
- Diseases directly attributable to the rescue and relief efforts at the Pentagon following the terrorist attack of Sept. 11, 2001.

If an employer paid benefits or failed to file a first report of injury as required by the WCA, the time for an employee or dependent to file a claim begins as of the date the employer:

- Last made a workers' compensation payment to the employee; or
- Filed its first report with the Commission.

DISPUTED CLAIMS

The Commission has the authority to resolve any questions or disputes that arise under the WCA. While the law expressly encourages employees and employers to resolve issues on their own and reach settlement agreements among themselves, the Commission must approve these agreements before they may take effect.

If an employer and employee (or his or her dependents in cases involving the employee's work-related death) fail to reach an agreement, or if they have a Commission-approved agreement but disagree as to the continuance of any payment under the agreement, either party may file an application for a hearing with the Commission.

COMMISSION HEARINGS

After receiving a hearing application, the Commission will review the case and may require or give the opposing party an opportunity to respond. The Commission may also order the parties to attempt to resolve the issues through informal dispute resolution.

If appropriate, the Commission will set a date for a hearing and notify the parties of the time and place of the hearing.

Hearings before the Commission proceed under similar rules that apply to court trials, which allow the parties to present evidence and question witnesses under oath. Because the Commission is not bound by strict rules of evidence or technical rules of practice, however, workers' compensation hearings are often shorter and more informal than court trials.

One or more members of the Commission may preside over a hearing. After a hearing concludes, the presiding Commission member or members will issue a written decision awarding or denying benefits.

REVIEW BY FULL COMMISSION

A party that is not satisfied with a Commission decision may submit an application for review to the Commission **within 30 days** after the decision was issued. Otherwise, the decision becomes final and binding on the parties as of the 30th day, and the parties lose any right to appeal it.

If a party does submit an application for review, the full Commission (excluding the member or members that issued the decision in question) will review all the evidence and may schedule and preside over a rehearing. The full Commission will then issue its own written decision awarding or denying benefits.

JUDICIAL APPEALS

Any party that is dissatisfied with a decision issued by the full Commission can appeal for review by a Virginia Court of Appeals. This appeal must be filed with the clerk of the Commission and with the clerk of the Court of Appeals **within 30 days** of the full Commission's award.

Decisions made by the Court of Appeals may be appealed to the Virginia Supreme Court for the highest level of state review.

MORE INFORMATION

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

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