

EMPLOYMENT LAW SUMMARY

Virginia Workers' Compensation - Employee Eligibility



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) outlines eligibility requirements for employees. The [Virginia Workers' Compensation Commission](#) (Commission) administers the state workers' compensation system and resolves any disputes regarding whether a specific individual is eligible for benefits.

COVERED EMPLOYEES

The WCA requires all employers in the state to provide workers' compensation coverage if they have **three or more employees** (part-time or full-time) in regular service in the same business. Coverage requirements also apply to all operators of underground coal mines regardless of the number of employees.

The WCA's definition of a covered employee includes every person "in the service of another under any contract of hire or apprenticeship," regardless of whether the employment is legal. Employment may be expressed or implied.

The WCA specifically includes the following as covered employees:

- Aliens;
- Minors;
- Apprentices and trainees;
- Executive officers of corporations; and
- Managers of limited liability companies (LLCs).

EXCLUSIONS

Along with workers whose employers (other than underground coal mine operators) have fewer than three employees, the following are specifically excluded from the WCA's definition of an employee for coverage purposes:

- Casual employees, defined as those whose employment is not in the usual course of trade, business, profession or occupation of the employer;
- Licensed real estate salespeople and brokers;
- Taxicab or executive sedan drivers who are excluded from taxation under the federal Unemployment Tax Act;
- Domestic servants;
- Farm and horticultural laborers (unless the employer regularly employs three or more on a full-time basis);
- Certain railroad workers and truck drivers;
- Workers who are covered under federal workers' compensation laws;
- Non-compensated employees and directors of nonprofit corporations or property owners' associations;
- Certain sports officials; and

- Independent contractors.

ELECTIVE COVERAGE

Workers who are excluded from coverage because their employer has fewer than three employees may be covered if both the employee and the employer voluntarily elect the coverage.

Employers may also voluntarily elect to cover other excluded workers by purchasing workers' compensation coverage for them or by qualifying as a self-insurer. An employer that wishes to cover an independent contractor under a workers' compensation policy must first obtain written approval from its insurance carrier.

The WCA also allows some individuals to elect coverage for themselves. These include:

- Sole proprietors;
- Shareholders of stock corporations that have only one shareholder;
- Members of LLCs that have only one member;
- Partners of a business.

In general, neither an employee nor an employer may waive coverage that is required under the WCA. However, some executive officers are allowed to reject coverage for themselves.

COMPENSABLE CONDITIONS

Compensable conditions include work-related injuries and occupational diseases, as well as employee deaths that result from them.

An injury may be compensable if it is the result of an accident that arises out of and in the course of employment. Whether an accident "arises out of the employment" depends on whether there is a causal connection between the employee's injury and the conditions under which the employer requires the employee's work to be performed.

Unlike many other states' workers' compensation laws, the WCA requires an "actual"—as opposed to a "positional"—risk. This means that the hazard that causes a workplace accident must be one that the employee would not have been equally exposed to outside of the employment. In other words, "the causative danger must be peculiar to the work and not common to the neighborhood." However, the WCA carves out an exception for sexual assaults where the nature of the employment substantially increases the risk of the assault

The "course of employment" requirement pertains to the time, place and circumstances of an accident. This requirement may be met if an accident occurs:

- Within the period of employment;
- At a place where the employee may reasonably be expected to be; and
- While the employee is fulfilling the duties of (or performing a task that is reasonably incidental to) his or her employment.

Occupational diseases must also arise out of and in the course of employment, but determining causation involves additional considerations. A disease may be compensable only if, considering all the circumstances:

- There is a direct causal connection between the disease and the conditions under which work is performed;
- The disease followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
- The disease can be fairly traced to the employment as the proximate cause;
- The disease is incidental to the character of the business and not independent of the relation of employer and employee; and
- The disease originated from a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

EXCLUSIONS

Under the WCA, an employee's injury is not compensable if it results from the employee's:

- Voluntary participation in an employer-sponsored, off-duty recreational activity that it is not part of the employee's work duties;

- Voluntary use of a motor vehicle provided by a motor vehicle dealer that is used for commuting to and from work or for non-work activity;
- Willful misconduct;
- Intentional self-infliction of injury;
- Attempt to injure another;
- Intoxication;
- Willful failure or refusal to use a safety appliance or perform a duty required by statute;
- Willful breach of any reasonable rule or regulation adopted by the employer and brought, prior to the accident, to the knowledge of the employee; or
- Use of a non-prescribed controlled substance.

In addition, a disease is not compensable if the general public is exposed to it outside of employment or if the employee may have had substantial exposure to it outside of his or her employment. The WCA also specifically excludes any condition of the neck, back or spinal column and "diseases of ordinary life," including hearing loss and carpal tunnel syndrome, from its definition of an occupational disease unless an employee can meet a heightened standard of proof that the employment caused the condition.

EMPLOYEE RESPONSIBILITIES

The WCA sets additional expectations and responsibilities for employees who make workers' compensation claims. Failing to satisfy these may cause an individual to lose benefits, either in whole or in part. Among these duties, employees must:

- Inform a supervisor or manager of any work-related condition immediately or as soon as reasonable and practicable;
- Provide **written** notice of a work-related condition to the employer:
- For accidental injuries, the written notice is due **within 30 days** of the accident;
- For occupational diseases, written notice is due **within 60 days** after a medical provider first communicates the diagnosis of the disease to the employee;
- Accept all medical treatment and vocational services provided by the employer pursuant to the WCA;
- Submit to medical examinations upon a request made by the employer or the Commission;
- While receiving benefits, **immediately** report to the employer (or insurance carrier if applicable), any incarcerations, returns to work, increases in earnings, remarriages, changes in status as a full-time student and address changes.
- Accept any offers of employment suitable to their capacity from the employer; and
- File a claim for benefits **within two years** after an accident or after first 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). Other deadlines may apply for certain conditions such as coal miners' pneumoconiosis, byssinosis, asbestosis, HIV/AIDS and any disease directly attributable to the rescue and relief efforts at the Pentagon following the terrorist attack of September 11, 2001.

MORE INFORMATION

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