

EMPLOYMENT LAW SUMMARY

Virginia Workers' Compensation - Employer Penalties



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 requirements employers must follow and imposes penalties for noncompliance. The [Virginia Workers' Compensation Commission](#) (Commission) monitors and enforces compliance with the WCA throughout the state.

FAILURE TO PROVIDE REQUIRED COVERAGE

The WCA requires all employers in Virginia to maintain adequate workers' compensation insurance coverage for their employees if:

- They regularly employ **three or more** employees (part-time or full-time) in the same business; or
- They are underground coal mine operators (regardless of the number of individuals they employ).

Employers must also file proof of their workers' compensation coverage with the Commission within prescribed time periods (usually within 30 days of inception).

An employer that fails to comply with the coverage requirement or that fails to report its coverage to the Commission may be subject to:

Civil Penalties - Up to \$250 per day for each day of noncompliance (\$50,000 maximum)

Class 2 Misdemeanor charges - A fine of \$1,000, six months in prison or both. (for knowing and intentional violations)

An employer that remains noncompliant for more than 15 days after the Commission provides a notice of noncompliance may be subject to a **stop-work order** (a Commission order to stop all business transactions and operations). Stop-work orders remain in effect until the Commission makes a separate determination that the employer is compliant. The Commission may also add the **costs of collecting** the penalties to the civil penalty owed.

In addition, the WCA allows an employee to sue his or her employer for damages if the employee is injured while the employer does not have workers' compensation coverage. The damages an employee may recover in these situations may exceed the limited recovery available under the workers' compensation system. In addition, in a lawsuit for damages, the WCA prohibits an employer without coverage from using any of the following claims as a defense:

- The employee was negligent;
- The injury was caused by the negligence of a fellow employee; or
- The employee had assumed the risk of the injury.

An injured employee that does not sue its noncompliant employer for damages may instead obtain workers' compensation benefits from the state's Uninsured Employer's Fund. If the employee receives payments from the fund, the state attorney general has the authority to seek **full reimbursement** from the noncompliant employer.

REQUIRING OR ALLOWING EMPLOYEES TO PAY FOR COVERAGE

The WCA prohibits employers from allowing their employees to contribute, in any manner, to the cost of providing workers' compensation coverage. An employer that allows an employee to contribute to his or her coverage may be subject to a fine of **up to \$100** for each offense and may be ordered to refund any of the contributed amount to the employee.

FAILURE TO REPORT

Along with the coverage reporting requirement, the WCA imposes additional recordkeeping and reporting obligations on employers. Specifically, employers must:

- Report work-related injuries and deaths to the Commission **within 10 days** (minor injuries may be reported within 60 days, other reports must be filed as required by the Commission);
- Upon request, indicate how many employees they employ, their employees' hours of labor and the number of days the business has been in operation;
- Immediately file all medical reports they receive relating to an employee's claim and provide copies to the employee;
- Promptly notify both the employee and the Commission when a claim is denied; and
- File with the Commission reports concerning the payment and suspension of WCA benefits for all work-related injuries that do not meet the definition of a minor injury.

Employers that fail to comply with any of these requirements may be subject to:

Civil Penalties - Up to \$500 per violation

Class 2 Misdemeanor charges - Between \$500 and \$5,000 (for willful violations)

The Commission may also add the cost of collection to these penalties.

Employers are also responsible for providing the Commission with a memorandum outlining any settlement agreements that they may reach with injured employees (or deceased employees' dependents). An employer that fails to file a memorandum **within 14 calendar days** after the parties sign an agreement may be subject to a fine of **up to \$1,000**, along with any other sanctions the Commission may find appropriate.

FAILURE TO MAKE TIMELY PAYMENTS

Employers must promptly pay workers' compensation benefits to eligible employees, either on a weekly basis or at any other interval authorized by the Commission. If an employer fails to make any payment of compensation to an employee **within two weeks** of the payment's due date, the Commission may assess a penalty equal to **20 percent** of the unpaid amount. An employer that has no reasonable grounds for a delayed payment to an employee may also be ordered to pay:

Collection Costs - The whole cost of the proceedings that the employee must bring to obtain the benefits, including reasonable attorneys' fees, and **Interest** - 6 percent annual interest on the benefits accrued from the date the award should have been paid. (if attorney's fees are awarded)

MEDICAL BENEFITS

When an employer receives a medical bill related to a workers' compensation claim, it has **45 days** to deny or contest the charges. Otherwise, the employer must pay the bill within **60 days** of receiving it. An employer that does not meet either of these deadlines may be ordered to pay an additional **6 percent annual interest** on the billed amount, retroactive to the date the payment was due.

RETALIATION

The WCA prohibits employers from discharging an employee solely because the employee:

- Intends to file or has filed a workers' compensation claim; or
- Has testified or is about to testify in any workers' compensation proceeding.

An employer that violates this prohibition may be sued by the discharged employee and be ordered to:

- Rehire or reinstate the employee

- Pay Actual Damages (including back pay)
- Pay Attorneys' Fees
- Pay 6 percent annual Interest

FALSE STATEMENTS

Under the WCA, it is unlawful for any person to knowingly make, file or use any writing or document with the knowledge that it contains any materially false, fictitious or fraudulent statement or entry in connection with a workers' compensation award. It is also unlawful for any person to aid or abet another in violating this requirement.

False Statements - Class 6 Felony

- 12 months in jail, a \$2,500 fine or both, or
- One to five years in prison

UNREASONABLE AND BAD FAITH CLAIMS

The Commission or any court may order an employer to pay the **whole cost** of proceedings, including reasonable attorneys' fees, if it determines that the employer has brought, prosecuted or defended a WCA claim without reasonable grounds.

In addition, the Commission may require an employer to pay an additional **10 percent** of any accrued benefits if it finds that the employer has filed an application for a hearing in bad faith. Accrued benefits are calculated from the date when benefits should have been paid.

FAILURE TO COMPLY WITH TAX REQUIREMENTS

For purposes of calculating taxes under the WCA, self-insured employers (including members of group self-insurance associations) must make their payroll information available to the Commission at all times.

They must also pay the following taxes, which are percentages of the basic premiums chargeable against similar businesses that insure their workers' compensation through insurance policies:

- 2.5 percent for a workers' compensation maintenance fund;
- 1 percent for the state's Second Injury Fund; and
- 0.25 percent for the state's Uninsured Employer's fund.

A self-insured employer may be charged with a **misdemeanor**, punishable by a fine of **between \$100 and \$1,000** or by **confinement in jail for 10 to 90 days or both**, if it:

- Fails to comply with the tax requirements; or
- Willfully withholds information from or knowingly provides false or misleading information to the Commission for the purpose of avoiding or diminishing the tax amounts.

FAILURE TO REGISTER AS A PROFESSIONAL EMPLOYER SERVICES PROVIDER

The WCA includes special requirements for businesses that offer professional employer services, such as leasing employees to perform work for other employers. These businesses must register with the Commission before providing the services. They must also follow strict requirements for notifying the Commission and other agencies about their client companies and other information.

Failure to comply with any of the requirements applicable to businesses that offer professional employer services may result in civil penalties of **between \$500 and \$5,000** for each instance of noncompliance, in addition to any other applicable penalties.

If the Commission finds that an employer is noncompliant and the employer fails to comply within 15 days, the Commission may **order the employer to stop all business transactions and operations** until the Commission determines that the employer is compliant. The Commission may also add the **cost of collecting** the penalties to the aggregate civil penalty owed.

MORE INFORMATION

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