

# EMPLOYMENT LAW SUMMARY

## Virginia Workers' Compensation - Employer Responsibilities



*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 employer responsibilities. The [Virginia Workers' Compensation Commission](#) (Commission) investigates and enforces employer compliance under the WCA.

### COVERAGE REQUIREMENT

The WCA requires all employers in the state to maintain adequate workers' compensation insurance if they have **three or more** employees regularly employed (part-time or full-time) in the same business. Required coverage also applies to all underground coal mine operators (regardless of the number of employees) and to all statutory employers. A **statutory employer** is any entity that:

- Undertakes to perform or execute any work that is part of its trade, business or occupation and contracts with another person ("subcontractor") to perform or execute any of that work; or
- Contracts to perform or execute any work or undertaking that is not a part of the trade, business or occupation of the other party to the contract and makes a separate contract with any other person ("subcontractor") to perform that work.

Statutory employers must also maintain coverage for anyone with whom their subcontractors (as defined in either of the two bullet points above) contract to perform work. However, an exception to the statutory employer requirements may apply where the employer is a property manager.

Employers that have fewer than three employees or that are exempt from the coverage requirement for any other reason may provide coverage voluntarily.

An employer may satisfy the coverage requirement by:

- Purchasing a workers' compensation insurance policy from an authorized insurer;
- Obtaining the Commission's approval to self-insure as an individual employer or as part of a group of employers;
- Being a member of a group self-insurance association licensed by the Virginia State Corporation Commission; or
- Entering into an agreement for professional employer services that includes workers' compensation coverage from an authorized insurer.

Regardless of how the coverage requirement is met, the WCA prohibits employers from making employees pay for any part of their workers' compensation coverage.

### INSURANCE POLICIES

All workers' compensation insurance policies must contain an agreement by the insurer that it will promptly pay all WCA benefits. Insurers must also agree that this obligation continues even if the employer does not make premium payments after an employee's injury or does not provide required notices.

The WCA also requires insurers to provide a 5 percent premium discount to employers that establish and maintain a drug-free workplace program. Insurers are free to establish the criteria for these programs.

## SELF-INSURANCE

A self-insured employer or group of employers uses its own assets rather than those of an insurance company to insure against its liabilities under the WCA. The Commission may approve an employer for self-insurance only if the employer can prove it is solvent and has the financial ability to meet its obligations to any injured employees under the WCA. The Commission may also require an employer to deposit a specific amount of money as security.

Other obligations the WCA imposes on self-insured employers (including members of group self-insurance associations) include requirements that they:

- Designate and maintain a representative in Virginia to handle all workers' compensation claims;
- Make their payroll information available to the Commission at all times; and
- Pay the following taxes, which are calculated as percentages of the basic premiums chargeable against the 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.

## COVERAGE REPORTING REQUIREMENT

Employers must file proof of their workers' compensation coverage with the Commission. Insurance carriers are required to file this notice for their insured employers **within 30 days** of the inception of a policy. All other employers must file the evidence of compliance annually or as often as the Commission deems necessary.

If an employer's insurance policy or membership in a group self-insurance association is cancelled for any reason, the employer must provide **30 days' written notice** to all covered employees and **immediately** notify the Commission by filing a notice that includes the date of and the reasons for the cancellation.

## POSTING REQUIREMENT

Employers must post and maintain a notice of their compliance with the WCA in a conspicuous place in their places of business.

The notice must be placed in a location frequented by employees. The Commission will supply a copy of the notice upon an employer's request.

## INJURY REPORTING REQUIREMENTS

Every employer in Virginia must keep a record of all work-related injuries and deaths. Within **ten days** after an injury or death occurs or after having knowledge of an occupational disease, an employer subject to the WCA must file a first report of injury with the Commission. This 10-day requirement applies for any work-related condition that results in any of the following:

- Lost time or partial disability exceeding seven days;
- Medical expenses exceeding \$1,000;
- Any denial of compensability;
- Any disputed issues;
- Death;
- Any permanent disability or disfigurement.

If a condition does not meet any of the above criteria, it may be deemed a "minor injury" under the WCA. For minor injuries, employers have **60 days** to file a first report with the Commission.

Employers must also file reports concerning denials, payments of compensation to employees, medical expense payments and suspensions of compensation for all injuries that do not meet the definition of a minor injury.

## MORE INFORMATION

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

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational

