

WORKERS' COMPENSATION FOR VA PRIVATE SECTOR WORKERS



WHAT IS WORKER'S COMPENSATION?

Workers' compensation is a no-fault insurance system for employees who are injured on the job. Employees receive medical care and other benefits and may not sue their employers in court but instead enforce their rights through the Virginia Workers' Compensation Commission.

WHEN I AM INJURED ON THE JOB, WHAT PROTECTIONS DO I HAVE?

- Workers' compensation for VA workers who are injured on the job provides **medical care** and **wage replacement** for work time lost due to the injury or disease and benefits for permanent impairments including scars.
- You can receive 2/3 of your average weekly wage. These compensation benefits are not taxed but there is a cap on the weekly amount of benefits in VA. The amount of monetary benefits to which a claimant is entitled depends on:
 - 1) Whether the injury results in a partial or total disability;
 - 2) Whether the disability is permanent or temporary;
 - 3) How much money the worker was earning prior to the injury.

Note: In VA compensation is capped at 500 weeks unless the individual is deemed to have a permanent total disability. There are no limits in amount or duration for medical expenses.

WHO IS COVERED?

- Employees of employers with more than two employees are covered by the workers' compensation system. Va. Code §65.2-101. If the injury occurs outside VA, in order to be compensable under Virginia law the contract of employment must have been made in Virginia and the employer must have a place of employment in Virginia, and the contract cannot be for work exclusively outside of the state. If you are not covered by VA workers' compensation, you are likely covered by another state's workers' compensation system. If you are not sure where to file your claim, consult an attorney.
- **Injured workers in VA who are undocumented are covered for medical benefits, temporary or permanent total disability, and permanent impairments.** Va. Code 65.2-502 states that workers "not eligible for lawful employment" are not eligible for temporary partial disability. Once an undocumented worker is released to do any kind of work or is classified as a "temporary partial disability" they cannot receive any wage loss compensation but they are still entitled to medical treatment.

HOW DO I RECEIVE WORKERS' COMPENSATION BENEFITS?

In order to have a valid workers' compensation claim, generally you must provide notice of your injury to your employer within 30 days of the injury and file a claim with the VA Workers' Compensation Commission within two (2) years of the injury. Even if the employer has accepted your claim and is paying you benefits, you still must file a claim with the Commission within two years. You must also be able to prove that your injury was work-related by providing evidence from a doctor. **You must always file a claim with the Commission even if you are already getting benefits because if you don't file a claim, the statute of limitations will prevent you from getting your lifetime medical benefits and additional disability pay.** Claims forms can be accessed online at the VA Worker's Compensation Commission website (<http://www.vwc.state.va.us/portal/vwc-website>) and mailed to 1000 DMV Drive, Richmond, VA 23220.

IN ADDITION TO FILING A CLAIM WITH THE COMMISSION, WHAT ELSE DO I NEED TO SEND TO THE COMMISSION?

- You should also send a letter updating your claim any time you miss an additional day of work, within 90 days of that date. You also need to send a letter to the commission listing every body part that was injured, and this must be received by the Commission within two years of the accident. The best way to protect your claim is to write letters frequently to the Commission at: 1000 DMV Drive, Richmond, VA 23220.

DOES MY INJURY HAVE TO BE FROM A SPECIFIC INCIDENT, LIKE AN ACCIDENT, TO BE COVERED BY WORKERS' COMPENSATION?

- Yes. Virginia has the most restrictive definition of “injury by accident” in the nation. In order to be covered, an injury must be a “specific incident,” occurring at a “reasonably definite time,” causing a “sudden mechanical or structural change in the body.”
- E.g., if you are injured lifting a box, that injury will most likely be covered; however, if you are injured after lifting boxes regularly over a period of time, that injury may not be covered. Gradual injuries are not covered.
- Certain diseases may be covered. Carpal tunnel syndrome and hearing loss can be covered but there is a very high burden of proof that the work caused these conditions and activities outside work did not cause them.
- You also have to prove that the accident “arose out of the employment,” in other words, that it was caused by some work condition. “Unexplained falls” are not compensable, so you have to explain what work condition or defect caused the fall.

WHAT IF MY EMPLOYER DENIES MY CLAIM?

- You can file for a hearing with the Virginia Workers’ Compensation Commission and it is up to the Commission whether you should get workers’ compensation.

CAN I SEE ANY DOCTOR?

- The employer has the right to limit you to a panel of three doctors.

WHAT DO I HAVE TO DO IF MY DOCTOR SAYS I CAN DO LIGHT DUTY WORK BUT NOT MY REGULAR JOB?

- If you are released to light duty you must prove that you are looking for jobs you can do given any restrictions imposed by the doctor. You should register with the Virginia Employment Commission (VEC) online at <http://www.vec.virginia.gov/find-a-job/register-job-services>, look in the newspapers, apply for at least five jobs a week, ask to return to your pre-injury employer, and keep a written record of your job search. Even if you return to your employer for less pay, you need to try to supplement your income by looking for jobs after work or jobs that pay more.

WHAT IF I HAVE A PRE-EXISTING CONDITION THAT ALSO CONTRIBUTES TO MY INJURY?

- The employer takes the employee as he or she is, with her pre-existing weaknesses, so that may not prevent your injury from being compensated.

CAN I GET WORKERS’ COMPENSATION EVEN THOUGH I WAS AT FAULT FOR A WORK ACCIDENT?

- Generally, even if you were somehow at fault for the accident because of carelessness, you are still entitled to benefits, because workers’ compensation operates on a “no-fault” system. However, if the injury happened because you knowingly violated a safety rule, were drunk, or on drugs you may not be entitled to receive workers’ compensation.

CAN MY EMPLOYER FIRE ME OR DISCRIMINATE AGAINST ME BECAUSE I APPLY FOR WORKERS’ COMPENSATION?

- It is against the law for an employer to fire or discriminate against you because you have filed for workers’ compensation. If you were fired or somehow discriminated against for filing a workers’ compensation claim, you can file a lawsuit.

For more information about your workplace rights come to EJC’s Workers’ Rights Clinic from 6:00 p.m. – 9:00 p.m. on Wednesdays at Bread for the City, NW (1525 7th Street, NW, between P and Q Streets, NW; list starts at 5 p.m.) or, from 11:00 a.m. – 2:00 p.m. the first and third Fridays of each month at Bread for the City, SE (1640 Good Hope Road, SE). The clinic is first-come, first served, and no appointment is necessary. For more information, visit the D.C. Employment Justice Center website at www.dcejc.org.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in Washington, D.C. Because laws and procedures frequently change, the D.C. Employment Justice Center cannot ensure that the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights.

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