

CENTRAL VIRGINIA LEGAL AID SOCIETY, INC.



1000 Preston Ave, Suite B 101 W Broad, Ste 101 2006 Wakefield Street
Charlottesville, VA 22903 Richmond, VA 23241 Petersburg, VA 23805
434-296-8851 (Voice) 804-648-1012 (Voice) 804-862-1100 (Voice)
434-296-5731 (Fax) 804-649-8794 (Fax) 804-861-4311 (Fax)



Workers' Compensation

Workers' compensation is a state program to help workers who get injuries or diseases from their jobs. It is run by the Virginia Workers Compensation Commission (WCC).

Who is covered by Virginia workers' compensation?

Generally, you are covered by Virginia workers' compensation if your employer has three or more employees. Some workers aren't covered.

- Independent contractors.
- Elected state and local officials.
- Taxicab and executive sedan drivers if excluded from taxation under the Federal Unemployment Tax Act.
- Casual and domestic workers.
- Farm workers, unless the employer has more than two full-time employees.
- Railroad workers in interstate or foreign commerce.
- Federal employees.

What injuries are covered by workers' compensation?

You may get workers' compensation for an injury by accident if it arises out of, and in the course of, your job. The injury must occur at work or during a work-related activity. It must be caused by a specific work activity. It must happen suddenly at specific time. Injuries that occur gradually or from repeated trauma are not covered. Diseases that occur from repeated trauma may be covered.

What diseases are covered by workers' compensation?

You may get workers' compensation for a disease if it was caused by your work. The disease must arise out of, and in the course of, your job. It can't be an ordinary disease of life to which the general public is exposed outside of work. It can't be a disease of the neck, back, or spinal column. It can't be hearing loss or carpal tunnel syndrome.

Are some injuries not covered by workers' compensation?

You can't get workers' compensation for an injury or death due to your willful

misconduct, drunkenness, willful failure to use a safety device, willful violation of an employer's reasonable rule that you knew about, or your use of a non-prescribed controlled drug.

What should I do if I have a work-related injury?

You must give a written notice to your employer within 30 days of the injury. The notice must state your name and address; the time, place, nature and cause of the accident; and the nature and cause of the injury. You must sign and date the notice. You should save a copy of it.

You also must file a claim with the WCC within two years of the injury. If you don't do this, you may forever lose your right to benefits. Even if your employer pays lost wages or provides medical care, you still should file a claim with the WCC. If you don't file a claim, your employer may stop paying lost wages or medical expenses at any time.

What should I do if I have a work-related disease?

You must give a written notice to your employer within 60 days of when you're told you have the disease. The notice must state your name and address, and the nature and cause of the disease. You must sign and date the notice. You should save a copy of it.

You also must file a claim with the WCC within two years of when you were told of your disease, or within five years of when you last were exposed to the work causing the disease, whichever is sooner. If you don't do this, you may forever lose your right to benefits. Even if your employer pays lost wages or provides medical care, you still should file a claim with the WCC. If you don't file a claim, your employer may stop paying lost wages or medical expenses at any time.

What happens after I give notice and file a claim?

Most claims are settled by agreement between you and your employer. If you can't agree, you may ask for a hearing in front of a Deputy Commissioner of the WCC. A hearing is held generally within six weeks of when you ask. If you ask, the WCC may pay for a medical exam by an impartial doctor. You will get a written decision usually within two weeks of the hearing. If you disagree with the decision, you can appeal to the full WCC within 20 days. If you disagree with their decision, you can appeal to the Virginia Court of Appeals within 30 days.

What do I do if I have a problem getting benefits?

First, talk with your employer's insurance carrier or your self-insured employer to find out why your claim is denied. Often disputes can be resolved by sharing information or obtaining medical records. If you cannot resolve the dispute, you must file a claim for benefits.

Where do I file a claim?

If your claim is denied or if the employer/carrier refuses to make payments, you should

send a written request for a hearing to the Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, 1-877-664-2566 (toll-free), 804-367-9740 (fax).

If my employer has accepted my claim, reported my accident to the WCC, and paid me for my lost time and my medical bills; do I still need to file something with the WCC?

Yes. You must notify the WCC in writing as soon as possible every time you miss work even if your employer has accepted the claim. The only exception is where you have signed an Agreement form and received an award for each period of lost time.

What happens at the Deputy Commissioner's hearing?

Hearings before Deputy Commissioners are evidentiary proceedings. All parties and their witnesses testify under oath. Everyone testifying will be subject to questioning by all parties. Hearings usually are held in the city or county where the accident occurred or in an adjoining city or county.

Is a hearing before a Deputy Commissioner always needed?

No. Hearings only are needed if you and the employer/carrier cannot resolve the dispute. If the dispute can not be resolved, the WCC decides whether your employer/carrier must pay for benefits or provide services.

Do I need an attorney for a workers' compensation hearing?

You may be able to do this, but it is not recommended. Workers' compensation hearings are difficult. You may lose your right to benefits if you don't know the law. Attorneys' fees are set by the WCC, and are deducted from the award if you win.. The employer/carrier must be represented by a lawyer. It is your decision whether to hire an attorney. However, you will be at a disadvantage without legal representation.

What benefits are paid by workers' compensation?

Workers' compensation pays these benefits.

- Temporary total or partial disability benefits.
- Lifetime medical benefits.
- Permanent partial disability benefits.
- Permanent total disability benefits.
- Death benefits.
- Vocational rehabilitation benefits.

What are temporary total or partial disability benefits?

If you can't do any work your employer has, you can get $\frac{2}{3}$ of your average weekly wage up to a set limit. You can't get benefits for more than 500 weeks unless you're totally and permanently disabled. If you can't return to regular work and are given a lighter duty job at a lower wage, you can get $\frac{2}{3}$ of the difference between your old wage and your new wage.

What are lifetime medical benefits?

Your medical expenses due to the injury or disease are paid as long as needed. You must choose a doctor from a panel of three physicians offered by your employer. If you're not offered this panel, you may get treatment from any doctor. The treating doctor may refer you to other doctors. If determined necessary by the treating doctor and the WCC, your employer also must furnish lifts, beds, ramps, handrails and other appliances and alterations up to \$25,000 in cost. Once treatment starts, you can't change doctors without approval by your employer or by the WCC. You must cooperate with medical treatment. If not, all benefits may be stopped.

What are permanent partial disability benefits?

You may be paid separate benefits for permanent loss of a body part, such as an arm, leg, finger, or eye. Benefits are for a set number of weeks.

What are permanent total disability benefits?

You may be paid lifetime benefits for permanent loss of both hands, arms, feet, legs, eyes, or any two in the same accident. You may be paid lifetime benefits for total paralysis or severe brain injury.

What are death benefits?

Your surviving spouse, children under 18, children under 23 still in school, low-income parents, and other dependents may be paid benefits for lost wages. Your employer also must pay burial expenses up to \$10,000.

What are vocational rehabilitation benefits?

If you're released to light duty, you must actively look for a light duty job. You may be offered or entitled to job retraining. If you refuse to take job retraining or work suited to your ability, you can't get any benefits unless your refusal is for a good reason.

Can I be fired if I file a claim for workers' compensation?

Your employer may not fire you solely because you intend to file or have filed a claim for workers' compensation.

Can I sue my employer for a work-related injury or disease?

No. If you're hurt when doing your job, workers' compensation is your only claim against your employer.