

Virginia Workers' Compensation Overview Quick Guide



AVAILABLE BENEFITS

Time Periods for Filing:

Filing of Employer's Accident Report:	10 days
Waiting Period for TTD/TPD:	7 days, recoverable after first 21 days
Response to Orders for Information:	20 days
Notice of Injury to Employer	30 days

Statute of Limitations:

Claim for Benefits:	2 Years
Change in Condition (TTD/TPD):	2 Years (from date comp. last paid pursuant to Award)
Change in Condition (PPD):	3 Years (from date comp. last paid pursuant to Award)

Appeal Deadlines:

To Full Commission:	30 days
To Virginia Court of Appeals:	30 days

STATE MINIMUMS/ MAXIMUMS/ COLA

Effective Date	Max.	Min.	Cost of Living (eff. 10/1)
7/1/2020	\$1,137	\$284.25	2.30%
7/1/2019	\$1,102	\$275.50	1.85%
7/1/2018	\$1,082	\$270.50	2.15%
7/1/2017	\$1,043	\$260.75	2.05%
7/1/2016	\$996	\$249.00	.55%
7/1/2015	\$975	\$243.75	.55%
7/1/2014	\$967	\$241.75	1.50%

Permanent Partial Disability (PPD)

Thumb	60 wks
1st finger (index finger)	35 wks
2nd finger	30 wks
3rd finger	20 wks
4th finger (little finger)	15 wks
1st phalanx of thumb/finger:	one-half compensation for entire thumb/finger
More than 1 phalanx	loss of entire thumb/finger
Loss of multiple fingers	not to exceed PPD for loss of hand
Great toe	30 wks
Other toe	10 wks
First phalanx of any toe:	one-half compensation for loss of entire toe
More than 1 phalanx	loss of entire toe
Hand	150 wks
Arm	200 wks
Foot	125 wks
Leg	175 wks
Total vision loss (one eye)	100 wks
Total hearing loss (one ear)	50 wks
Disfigurement	maximum 60 wks
Pneumoconiosis, including but not limited to silicosis and asbestosis, medically determined to be in the :	

First Stage	50 wks
Second Stage	100 wks
Third Stage	300 wks
Byssinosis	50 wks
Permanent and total loss	Life

AVAILABLE BENEFITS

Medical:

The employer/insurer must provide reasonable, related, authorized and necessary medical treatment for as long as necessary. A panel of three physicians should be provided as soon as possible. If a panel is not offered within a "reasonable" time, or if the claim is denied, the employee may select his/her own physician.

Indemnity:

All wage loss and loss of use benefits in Virginia are based on the claimant's Average Weekly Wage (AWW). The AWW is calculated using the 52 weeks of gross wages prior to the injury. Stacking of wages from similar employment is permitted. Indemnity benefits are payable for a maximum of 500 weeks.

Temporary Total Disability (TTD): Payable at 2/3 of the AWW, subject to state maximums and minimums (see chart at left).

Temporary Partial Disability (TPD): Payable at 2/3 of the difference between the pre-injury and post-injury AWW.

Permanent Partial Disability (PPD): Payable at 2/3 of the AWW and awarded for permanent impairment/loss of use (See chart at left).

Permanent Total Disability (PTD): Awarded when injury results in loss of use of more than one scheduled member in the same accident; injury resulting in total paralysis or severe brain injury rendering employee permanently unemployable in gainful employment. Payable at 2/3 of the AWW for employee's lifetime.

Death Benefits/Dependency:

Payable at 2/3 of the AWW to those dependent for support on the deceased. In addition, funeral/burial expenses are reimbursable up to \$10,000 and transportation expenses reimbursable up to \$1000.

Vocational Rehabilitation:

If claimant cannot return to pre-injury employment, and is on open award, employer/insurer may offer vocational rehabilitation which may include vocational evaluation, job coaching, job development, job placement, on the job training, education and retraining (§65.2-603).

Mileage:

Upon request by the claimant, mileage to/from physician appointments is reimbursable at the following rates: 27 cents per mile (prior to 10/1/05); 32.5 cents per mile (10/1/05 through 9/30/06); 44.5 cents per mile (10/1/06 through 6/30/08); 50.5 cents per mile (7/1/08 through 9/30/11); 55.5 cents per mile (10/1/11 and continuing).

PRACTICE and PROCEDURE

Contest a Claim:

Upon the filing of an Employee's Claim for Benefits, the Commission will issue Orders for Information to the employer/insurer for completion within 20 days. Failure to timely respond may result in a finding of contempt and/or a monetary fine.

Hearing:

For any issues in dispute, an evidentiary hearing (witnesses are sworn and testimony is transcribed) is scheduled. Medicals must be exchanged by the parties prior to the hearing. Discovery (e.g., depositions) is permitted. Subsequent to the hearing, a written Opinion is issued.

Appeal:

Any party dissatisfied with the opinion may file an appeal (Request for Review) with the Full Commission within 30 days. The Full Commission does not take new evidence but will review the case de novo and issue a written opinion. An appeal may be taken of the Full Commission's opinion to the Virginia Court of Appeals within 30 days.

Settlements:

Claims, including medicals, may be completely closed by a "full and final" settlement. Settlements, however, must be approved by the VWC. (Rule 1.7).

Independent Medical Examinations (IME):

Employer is entitled to only one IME per specialty. Additional IMEs may be requested only on a showing of "good cause." (§65.2-607).

Terminating Benefits:

Benefits may not be suspended unilaterally. If the employee is unwilling to sign a Termination of Wage Loss Award (Form 46), the employer/insurer must file a notarized Application for Hearing (Form 5A) with supporting documentation and payment through the date of filing*.

Employer's Application for Hearing:

Grounds for filing to terminate benefits include but are not limited to:

- Release to full duty
- Actual return to work (either light duty or full duty)
- Refusal of medical treatment or refusal to attend IME
- Refusal to cooperate with vocational rehabilitation efforts
- Unjustified refusal of light duty employment
- Failure to report incarceration, change of address, change in earnings, remarriage or change in student status
- Continuing disability is unrelated.

*Payment through date of filing required for most Employer's Applications for Hearing, with certain exceptions (Rule 1.4).

COMPENSABILITY and DEFENSES

Accidental Injury (AI):

Benefits are to be paid for accidental injuries arising out of and in the course of employment. If an AI materially aggravates an underlying condition, all resulting lost time and treatment is compensable.

Occupational Disease (OD):

An occupational disease arises out of and in the course of the claimant's employment and must be proven by a preponderance of the evidence (§65.2-400), but is not an ordinary disease of life to which the general public is exposed outside of the employment. Certain "ordinary diseases of life" may also be compensable if the disease did not arise from causes outside the employment (e.g., carpal tunnel syndrome and hearing loss).

Defenses:

Claimant is not entitled to benefits if the accidental injury or occupational disease is self-inflicted, the result of willful misconduct, the result of an attempt to injure another, failure to use a safety device or perform a statutory duty, violation of a known safety rule or intoxication/drug use.

Exclusivity/Subrogation:

Employee may not sue employer for work-related injury (§65.2-307). If injury is caused by a "stranger to the business," employee may file suit, and a lien is created on behalf of the employer/insurer against any third-party verdict or settlement (§65.2-309).

Forms:

See www.vwc.state.va.us for downloadable forms.

Commission Contact Information:

Virginia Workers' Compensation Commission –Headquarters
333 E. Franklin St.,
Richmond, VA 23220
Phone: 1-877-664-2566 – Fax: (804) 823-6957

Fairfax Regional Office

(703) 207-7152
(703) 207-7195 Fax

Harrisonburg Regional Office

(540)-433-7701
(540) 433-7500 Fax

Lebanon Regional Office

(276)-889-7644
(276) 889-7647 Fax

Manassas Regional Office

(703)-257-7994
(703) 257-7246 Fax

Roanoke Regional Office

(540)-776-2700
(540) 776-2705 Fax

Virginia Beach Regional Office

(757)-552-1117
(757) 552-1114 Fax

Copyright ©7/2020 Franklin & Prokopik, P.C. This Franklin & Prokopik document contains information of general interest to the public and does not constitute legal advice. No claims, promises or guarantees about the accuracy, completeness, or adequacy of the information contained in this document are made. The receipt of this information does not create an attorney-client relationship. As legal advice must be tailored to the specific circumstances of each case, and laws are constantly changing, nothing provided herein should be used as a substitute for the advice of competent counsel.