

Virginia Workers' Compensation Commission

Frequently Asked Insurance Questions for Employers

The information contained below is general in nature and is not intended and may not be considered as providing legal advice or advisory opinions. If you have legal questions, you may wish to seek the advice of legal counsel. Answers to specific questions often vary depending on facts and information that may not be disclosed or be readily apparent.

1 Q: Am I required to obtain workers' compensation insurance?

A: As a general rule, a business with **more than two** part-time or full-time employees is required to carry workers' compensation coverage. If a business hires subcontractors to perform the same trade, business or occupation, or to fulfill a contract, the subcontractor's employees are included when determining the total number of employees for coverage requirements. Executive officers also count as employees. If the total number of all employees is more than two, workers' compensation is required. Workers' compensation is mandatory for those employers who meet the requirements under the law.

2 Q: Does a sole proprietor with no employees need to carry workers' compensation insurance?

A: A sole proprietor that has no employees and that does not hire subcontractors is not required to carry workers' compensation coverage. An individual that is not required to carry coverage can obtain it voluntarily.

3 Q: I am a sole proprietor with no employees; can I obtain an Exemption Form?

A: The Commission does not provide an exemption or waiver form for an employer that is not required to carry coverage under the Act. Some states offer such a form but Virginia does not.

4 Q: How does an employer obtain insurance?

A: There are several options for obtaining coverage:

- Purchase a policy from an insurance carrier licensed in Virginia
- Obtain approval from the Commission to be self-insured (must meet minimum requirements)
- Become a member of a licensed group self-insured association
- Become a member of a local government group self-insurance pool
- Enter into an agreement for Professional Employer Services with a PEO registered in Virginia

5 Q: Can I purchase insurance from the Commission?

A: Insurance coverage is not available from the Commission. Coverage is available through an insurance agent or carrier. Two statewide insurance organizations that maintain membership of most agents:

- Independent Insurance Agents of Virginia, website: iiav.com
- The Professional Insurance Agents Association of Virginia and the District of Columbia, website: piavadc.com

6 Q: How much does workers' compensation insurance cost?

A: The cost of a workers' compensation policy is determined by three main factors: 1) the type of work performed (classification code), 2) payroll; and 3) experience or loss history. Workers' compensation insurance rates are higher for more hazardous industries and for businesses with more frequent claims. While rates are set by the Bureau of Insurance each year, insurers can offer discounts or credits so premium can vary by insurer. The best way to obtain an accurate sense of policy cost is to contact an insurance agent or insurer and obtain one or more quotes.

7 Q: How do I contact the Virginia State Fund?

A: Virginia does not have a State Fund. Coverage is available through an insurance agent or carrier.

8 Q: I am unable to obtain coverage from an insurance agent or carrier, what can I do?

A: An employer that cannot obtain coverage in the voluntary market can contact the National Council on Compensation Insurance (NCCI) which manages Virginia's assigned risk market at 1-800-622-4123 or <https://www.ncci.com/pages/contactus.aspx>.

9 Q: I only hire independent contractors, do I need coverage?

A: Designating a worker as an "Independent Contractor" or paying them on a 1099 does not define a worker's employment status. A person is generally considered an employee if: 1) they are selected, 2) can be dismissed, 3) earn pay or wages, and 4) control is exercised over the means and method by which the work is performed. If "control" is exercised over the worker, the worker may be counted as an employee for coverage purposes.

10 Q: Are volunteers employees?

A: Generally, volunteers that are not paid or compensated are not employees under the Virginia Workers' Compensation Act. If a business wishes to cover a volunteer they can be endorsed onto a policy.

11 Q: Can I exempt an employee from my policy?

A: An employer cannot exclude an individual employee or employees from a policy, by waiver or by any other means. For an employer that is required to carry coverage, all employees are covered and cannot be exempted. The only employees that can "reject" coverage are executive officers and LLC managers. In order to reject coverage the business must have valid coverage and the officer or manager must file a Rejection of Coverage form.

12 Q: Are corporate officers exempt from coverage?

A: Executive officers (corporate officers) and LLC managers are defined as employees. An executive officer is defined as the president, vice-president, secretary, treasurer or other officer elected or appointed in accordance with the charter and bylaws, and the LLC manager elected or appointed in accordance with the articles of organization or operating agreement of a LLC. Such individuals are employees even if they do not perform regular work for the business or earn a regular salary. The only exceptions are non-compensated employees and directors of a tax exempt 501(c)(3) corporation or property owners' associations as defined in Section 55-1800.

13 Q: We are a Virginia business with four LLC members and no employees. Are LLC members exempt from coverage requirements?

A: A member of a limited liability company LLC having only one member is not covered under the Act unless they specifically notify the insurer of their election to be covered. The statutes governing the Virginia Workers' Compensation Act are silent as to multiple members. It is important, therefore, to ask additional questions if there are multiple members to determine if any member performs work for the business and receives compensation as an employee. If a member performs work and receives pay as an employee, separate from their member duties, then they may be counted as an employee. A member can have two roles, one as a member and another as an employee.

14 Q: I received notice that my policy canceled. I have new coverage. What do you need from me?

A: If you obtained new coverage please send proof of coverage consisting of either the binder, the Declaration Page or the Information Page to the Commission by fax (804-418-4917), or by mail (333 E. Franklin Street, Richmond VA 23219). Email is not an acceptable means of filing therefore coverage information should not be submitted via email. Certificates of Insurance are not accepted as proof of coverage as they do not contain sufficient information.

15 Q: Is my occupational accident policy sufficient in place of a workers' compensation policy?

A: If you are an employer that is required to carry workers' compensation, no other form of insurance can substitute for workers' compensation.

16 Q: I am a business based outside Virginia and only performing work in Virginia temporarily. Do I need coverage? I understand that my state has reciprocity with many states.

A: Virginia requires workers' compensation coverage for work performed or subcontracted in Virginia, even if it is temporary work. Virginia does not have reciprocity with any other state.

17 Q: I am based outside Virginia and I have coverage but I received a notice from the Commission that my coverage is insufficient. What does this mean?

A: If you have valid coverage outside Virginia you may not have proper Virginia coverage. Virginia must be listed in Item 3A of the policy. Designating Virginia in Item 3C of the policy is not sufficient for work in Virginia. If your carrier is not licensed in Virginia then a separate policy with a Virginia licensed insurance carrier is required.

18 Q: I am a Virginia company that has obtained work in another state. Will my Virginia insurance cover the employees while out of state?

A: In the event a worker is injured in another state, the injured worker may have a choice of where to file a claim. You should check with the workers' compensation commission of the other jurisdiction to determine if your policy is sufficient to meet their coverage requirements. In the event a worker wishes to make a Virginia claim, please note the following foreign injury statute:

§ 65.2-508. Foreign injuries.

A. When an accident happens while the employee is employed elsewhere than in this Commonwealth which would entitle him or his dependents to compensation if it had happened in this Commonwealth, the employee or his dependents shall be entitled to compensation, if:

- 1. The contract of employment was made in this Commonwealth; and*
- 2. The employer's place of business is in this Commonwealth;*

provided the contract of employment was not expressly for service exclusively outside of the Commonwealth.

B. However, if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this title.

19 Q: Does Virginia offer a workers' compensation insurance discount for a Drug Free workplace?

A: Insurers are required to provide a premium discount of up to 5% to employers that institute and maintain a drug-free workplace program. Each insurer must establish their own discount criteria.

20 Q: Does Virginia offer a workers' compensation insurance discount for a workplace safety program?

A: There is no provision of the Virginia Workers' Compensation Act nor any program of the Commission that provides an insurance discount for a workplace safety program. An insurer may offer a credit or discount for an employer's workplace safety program or for workplace safety efforts.

21 Q: We were audited and now we are being charged audit premium for two independent contractors we hired last year. Can the insurer do this?

A: An employer is billed at policy inception based on estimated exposure. The insurer often conducts an audit at policy period end (commonly one year) to determine actual exposure. In the event a business hires an independent contractor or subcontractor, they represent exposure to the insurer, thus the employer may obtain proof of coverage from all independent contractors or subcontractors hired.

22 Q: Is there some way that I can verify the coverage of the subcontractors that I hire?

A: There is an Insurance Coverage Search tool available on the Commission's website which allows the public to search for employer coverage by business name or by Federal Employer Identification Number. The insurance coverage search tool is available at: <https://www.ewccv.com/cvs/>. Please keep in mind that this search tool covers only commercial insurance coverage and does not display self-insured or group self-insured employers.

23 Q: We have been notified that our classification codes changed and our insurance premium went up significantly. How can I contest this?

A: Workers' compensation insurance is under dual regulation in Virginia, as in most states. For matters that pertain to class codes and underwriting the best source for information is the Bureau of Insurance in State Corporation Commission. E-mail: bureauofinsurance@scc.virginia.gov or 804-371-9185.

24 Q: The cost of my workers' compensation insurance went up recently. Can I deduct a portion of the cost of my workers' compensation from my employees' wages?

A: No. An employer may not deduct any part of the cost of workers' compensation insurance from an employee's wages or request any contribution. An employer that violates this provision of the law is subject to a fine of up to \$100 for each offense and is required to refund the employee any amount deducted or contributed.

25 Q: Is there a monetary penalty for an employer that does not have proper coverage?

A: Pursuant to *Code of Virginia* § 65.2-805, an employer that fails to insure when required under the Act shall be assessed a civil penalty of not more than \$250 per day for each day of noncompliance, subject to a maximum penalty of \$50,000, plus collection costs.