



INJURED WORKERS' GUIDE

If you have been injured at work, you should file a claim immediately.

TYPES OF INJURIES UNDER THE ACT:

Employees are entitled to receive compensation for an “injury by accident” or an “occupational disease.”

In order to be covered, an “accident” must:

1. Occur at work or during a work-related function.
2. Be caused by a specific work activity.
3. Happen suddenly at a specific time. (Injuries incurred gradually or from repetitive trauma are not covered, although certain diseases caused by repetitive trauma are covered.)

In order to be covered, a disease must:

1. Be caused by the work.
2. Not be a disease of the back, neck, or spinal column.

MINOR INJURIES:

If you suffered a minor injury at work, you should file a claim with the Commission within the time limits stated below if your injury requires additional medical treatment or results in time loss from work.

TIME LIMITS FOR FILING A CLAIM:

An employee must file a claim with the Workers' Compensation Commission within two years from the date of the accident or any right to benefits may be lost. There are some exceptions to the statute of limitations. If you have questions regarding those exceptions you should seek legal advice.

Claims for an occupational disease must be filed within two years from the date the doctor tells the employee the disease is work related, or five years from the date the employee was last exposed to the work condition causing the disease, whichever is sooner. (Certain diseases, such as asbestosis, byssinosis, silicosis and coal workers' pneumoconiosis have different limitation periods.)

If after returning to work, you are again disabled, you must file a claim within two years of the date for which you were last paid compensation under an award. (This is called a “change in condition.”) Payment only goes back 90 days from the date of filing with the Commission.

Even if the employer has paid lost wages or provided medical care, it is still the employee's responsibility to file a claim with the Commission. If no claim is filed with the Commission or no award entered, the employer may stop paying medical expenses or wage loss at any time.

The employer or carrier may get information from the employee to send to the Commission, but this is not the filing of the employee's claim. The employee must file a claim even if the employer filed reports with the Commission.

BENEFITS UNDER THE ACT:

The employer must pay the following benefits under the Act:

1. Wage Replacement (Temporary total or partial)

While temporarily unable to perform any work, an employee is entitled to 2/3 of his or her gross average weekly wage up to a set maximum weekly limit. There must be seven (7) days of disability before benefits are payable. However, if disabled for more than three weeks, the employee receives payment for the first seven days. Benefits cannot exceed 500 weeks unless the person is totally and permanently disabled.

If the injured employee cannot return to regular work and is given a light duty job at a lower wage, benefits are 2/3 of the difference between the pre-injury wage and the current pay up to the maximum weekly limit. Cost of living supplements are not paid on temporary partial benefits.

2. Lifetime Medical Benefits

Medical expenses for conditions caused by the accident or occupational disease are payable for as long as necessary, provided a claim was filed by the employee within the required time period. The employee must select a doctor from a panel of three physicians provided by the employer/carrier. If a panel is not offered after notice of the accident, the employee may seek treatment from any physician. The treating physician may refer the employee to other doctors. Once treatment begins, the physician cannot be changed without approval of the employer/carrier or after a hearing by the Commission. The employee must cooperate with medical treatment or the weekly benefits may be suspended.

Medical bills should be sent to the insurance carrier for payment.

3. Wage Replacement (Temporary total or partial)

Separate benefits are payable for the permanent loss of use of a body part such as an arm, leg, finger, or eye. Vision and hearing loss, as well as disfigurement may also be compensated. This does not include the back, neck or body as a whole. Benefits are for a specific number of weeks depending on the percentage of loss. The employee can receive these benefits while working if maximum medical improvement has been reached.

4. Permanent and Total Disability

Lifetime wage benefits may be payable if an individual loses both hands, arms, feet, legs, eyes, or any two in the same accident, or is paralyzed or disabled from a severe brain injury.

5. Death Benefits

A surviving spouse, children under 18, children under 23 enrolled full time in an accredited educational institution, parents in destitute circumstances or other qualifying dependents may be entitled to wage loss benefits.

Death benefits include funeral expenses not to exceed \$10,000 and transportation cost of \$1,000.

6. Cost of Living Increase

A person receiving temporary total, permanent total or death benefits is entitled to cost of living increases effective October 1 of each year if the date of the accident is prior to July 1 of that year and if the combination of compensation and Social Security benefits are less than 80% of the pre-injury earnings. Cost of living increases must be specifically requested by the employee.

7. Vocational Rehabilitation

Employees who are released to light duty work must prove that they are actively looking for a light duty job, even if they expect to return to their regular job. You must accept all suitable positions offered, or risk suspension of benefits.

Where appropriate, an employee may be entitled to retraining.

PROCEDURE IF CLAIM IS DENIED BY EMPLOYER:

The Workers' Compensation Commission makes the final decision whether the employer must pay for the injury or disease.

If the employer/carrier denies the claim or refuses to make certain payments, this does not mean you are not entitled to benefits. It only means that the benefits will not be voluntarily paid. The employee should then send a written request for a hearing to the Commission.

At the hearing, the employee must prove through testimony, witnesses and medical reports, that the injury or disease and disability were caused by the work. If the employee was released to light work, then the employee must submit evidence that he/she has actively sought work. This includes seeking employment at the pre-injury employer, registering with the Virginia Employment Commission and listing dates and places where applications for work were made.

The employee is entitled to have a lawyer at the hearing at his/her own expense. All attorneys' fees are subject to approval by the commission.

REQUEST FOR REVIEW

If you disagree with the written hearing opinion, you must notify the Commission in writing within 30 days after receipt of notice of such award that you are requesting a review of the decision.

RESPONSIBILITIES OF AN INJURED EMPLOYEE:

1. Give notice to the employer as soon as possible.
2. File a claim with the Workers' Compensation Commission within two years from 1) the date of the accident or 2) the date the doctor diagnoses an occupational disease.
3. Select a doctor from a panel of three provided by the employer/carrier. Do not change doctors without employer/carrier permission or after a hearing by the Commission.
4. Seek and accept employment if released to light duty, and cooperate with "rehabilitation counselors."