



COMMONWEALTH OF VIRGINIA  
VIRGINIA WORKERS' COMPENSATION COMMISSION  
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## **Workers' Compensation Insurance Information for Employers**

### **Workers' Compensation**

Virginia law requires that most employers carry workers' compensation insurance in order to cover their workers in the event of a work injury. Workers' compensation provides a tradeoff for both employers and employees. For the employer, it provides an exclusive remedy, shielding the employer from civil suit. For the injured worker, it provides prompt but limited benefits.

### **When is an Employer Required to Have Coverage?**

Virginia law requires that an employer who regularly employs more than two part-time or full-time employees carry Virginia workers' compensation coverage. If a business hires subcontractors to perform the same trade, business or occupation, or to fulfill a contract of the business, the subcontractor's employees are included in determining the total number of employees. For those employers required to have coverage, it is mandatory, there are no waivers and no exceptions.

### **Contractor and Subcontractor Issues**

A business or contractor that hires subcontractors to assist in their work or fulfill a contract must count the subcontractor's employees as well as their own when considering if they have more than two employees, if yes, the business /contractor is required to carry workers' compensation coverage. This is true even if all subcontractors have their own coverage. A contractor should be aware that their insurance carrier can charge insurance premium for any subcontractor that is hired, even a sole proprietor with no employees, therefore a contractor should request and maintain proof of coverage for all subcontractors hired and have such proof available for audit.

### **Who is an "Employee"?**

To properly count employees and determine if a business needs coverage it is important to know who counts as an employee. All of the following are considered employees:

- Corporate officers and LLC managers, even if they are not performing regular work for the business or earning a regular salary
- Family members that perform work for the business
- Undocumented workers
- Temporary, seasonal and part-time workers
- Minors
- Workers that perform work for churches, charities and non-profits

### **Does Virginia Have a Waiver or Exemption Form for a Sole Proprietor?**

No. Virginia law does not lend itself to providing a waiver or exemption form for a sole proprietor or other employer that considers it not required to insure under the Act.

### **Independent Contractor vs. Employee**

Some business owners will designate a worker as “independent contractor” or pay them on a 1099. Under workers’ compensation law, the designation and 1099 are not important. In the event a worker is injured, the facts of the work relationship are considered. The courts will particularly consider: 1) was the worker selected, 2) can the worker be dismissed, 3) does the worker earn pay or wages, and 4) does the business owner have the ability to exert control over the manner or means of how the worker’s work is performed. If employer control is found, an “employee” relationship is established.

### **Limited Liability Company (LLC)**

A Manager of a LLC is treated as an employee under the Act. A LLC may have one or more managers that are elected or appointed in accordance with the articles of organization or operating agreement. Conversely, the Act specifically states that a LLC having only one member shall only be covered upon electing to be covered. Members of a LLC are generally not viewed as employees under the Act. However, additional questions may be asked of a member. If the LLC member performs work or earns pay they are covered under the Act by virtue of being an employee.

### **How to Obtain Coverage**

In Virginia there are four means of insuring for workers’ compensation in Virginia: 1) commercial coverage 2) self-insurance 3) group self-insurance, or 4) through a registered professional employer organization (PEO). Commercial coverage is available from an insurance agent or carrier. The two Virginia insurance organizations that maintain membership of most Virginia insurance agents are listed:

1. The Independent Insurance Agents of Virginia, telephone 804-747-9300
2. The Professional Insurance Agents Association of Virginia, telephone 804-264-2582

### **Proper Virginia Coverage**

Virginia requires proper Virginia coverage for work performed in Virginia. Out of state employers sometimes lack valid Virginia coverage. For most out of state employers with a policy based outside Virginia, valid Virginia coverage can be accomplished by adding the Virginia Amendatory Endorsement on the existing policy. Virginia must be added to item 3A of the policy for the entity and FEIN (Federal employer ID) to be covered in Virginia. 3A of the policy lists the states where the business performs work and has “known exposure.” Virginia 3C listing is not sufficient.

If the out of state employer’s policy is with a carrier that is not licensed in Virginia, then the Virginia 3A endorsement cannot be added. Monopolistic state funds cannot cover Virginia. In the event Virginia endorsement cannot be added to a policy, the only way to properly insure is to obtain a Virginia workers’ compensation policy with a Virginia licensed insurance carrier.

### **Employer Responsibilities**

- Review coverage requirements
- Carry proper workers’ compensation coverage when required by law
- Report work injuries promptly to your insurance carrier using carrier’s preferred method
- Post a Workers’ Compensation Notice (VWC Form 1) in the workplace
- Be aware the cost of workers’ compensation cannot be deducted from employee wages

### **How Much Does Workers’ Compensation Insurance Cost?**

The cost varies depending on how hazardous work is in your industry. The three main factors that establish how workers' compensation premium is calculated are: 1) classification code (industry) 2) payroll; and 3) experience modifier, which is based on claim/loss history. A higher premium will be charged in a more hazardous industry, with higher payroll and when there are more claims.

#### **How Can I Reduce the Cost of Workers' Compensation?**

Employers can take a variety of actions to reduce costs. Employers who are proactive with workplace safety, training and prevention have fewer work injuries which can lower premium. Reporting work injuries promptly and ensuring injured workers receive prompt medical treatment can reduce claim costs. Providing transitional duty and return to work opportunities for injured workers can also reduce claim costs.

#### **Are There Penalties if an Employer is Uninsured?**

Yes. An employer that fails to insure for workers' compensation when required by law shall be assessed a civil penalty of up to \$250 for each day uninsured, subject to a maximum penalty of \$50,000, plus costs pursuant to § 65.2-805. Such employer shall also be liable to any employee for compensation for their injuries. Continued failure to obtain workers' compensation coverage can result in an order prohibiting an employer from operating their business and can subject the employer to criminal prosecution. Uninsured employers are also at risk of suit by employees for damages resulting from work injuries.

#### **Insurance Underwriting Question and Disputes**

Bureau of Insurance in State Corporation Commission regulates underwriting and can advise on such matters as rates, premium, classification codes and audits. You may contact the Bureau by phone at: (804) 371-9185 or by email at [bureauofinsurance@scc.virginia.gov](mailto:bureauofinsurance@scc.virginia.gov).

#### **Workers' Compensation Insurance Questions**

For additional information or questions please utilize the following resources:  
Insurance Department main number, hours 8:30 a.m. – 4:45 p.m., M-F: **(804) 205-3586**  
Insurance Department e-mail: [wvinsurance@workcomp.virginia.gov](mailto:wvinsurance@workcomp.virginia.gov)