



VACORP

Virginia Workers' Compensation

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Compensability Basics

I. What is an Injury-by-Accident?

An accident is an event which occurs and is not expected by the person to whom it happens. An injury by accident is an identifiable incident or sudden precipitating event that results in an obvious sudden mechanical or structural change in the body. **Not** all injuries/incidents that occur on the job are covered under the VA Workers' Compensation Act.

For an injury to be covered **ALL** of the following must occur:

1. Caused by accident
 - a. An identifiable incident
 - b. Occurred at a reasonably definite time
 - c. An obvious, sudden, mechanical or structural change in the body
 - d. A causal connection between the incident and the bodily change must exist
2. Arise out of the employment
 - a. Refers to the time, place, and circumstance under which the accident takes place
 - b. Must be some connection between the accident and a risk/hazard connected with the employment
 - c. It must be shown that, due to the employment, the employee has been exposed to a hazard over and above those to which the public is exposed
3. Occur in the course/scope of employment
 - a. Refers to the time, place, and circumstance under which the injury occurred
 - b. Doing his/her employer's business

II. Questions to Determine Compensability

1. Has there been an injury caused by accident?
2. Did the injury arise out of the employment?
3. Was the employee acting in the course of his/her employment?
4. Is the injury causally related to the accident?

III. Injury-by-Accident Compensability Notes

1. Simple acts of walking, bending, or turning without any other contributing factors should not be considered as risks of employment
2. A "contortion" of the body to perform a job task is a hazard of the workplace.
3. Generally, injuries received going to and from work are not considered compensable.
4. Insect Bites received by the employee because of the greater risk they assume due to their job may be deemed compensable

5. The exiting of a vehicle resulting in unusual and awkward movement forms a connection between injury and employment and would therefore be determined compensable
6. Hernia
 - a. Causal connection must be shown; the mere fact of discovering condition while at work is not enough
 - b. Must be a result of an identifiable movement or action taken at work
7. Personal-Comfort Doctrine
 - a. Personal comfort doctrine recognizes the need for periodic breaks and excursions for food, drink, rest, and restroom visitation.
 - b. An injury sustained by an employee engaging in the performance of an act essential to personal comfort, but that is ultimately for the benefit of the employer is compensable
 - c. Injuries suffered during a temporary pause in work to get a drink of water, rest a few moments, answer a call of nature are within the act
 - d. Injuries suffered while on personal comfort break are compensable only if such break is taken on the premises or extended premises of the employer, or at a place and facility designated by the employer.
 - e. Injury from motor vehicle accident while en route to a nearby convenience store for coffee or snacks does not arise out of employment
8. If an employee is injured by some natural force, such as a hurricane, tornado, or lightning, drowns due to flooding, or is injured by falling debris during an earthquake, the event does **NOT**, by itself, put liability on the employer. Absent other evidence, death or disability arises from an act of God, not from the employment
9. Injury sustained during a recreational activity arises out of the employment only when the activity is an accepted and normal activity within the employment
10. Injury sustained during horseplay in which the employee is not participating in the horseplay, but is innocently injured by the pranks of other employees entitle compensation
11. Falls on steps are generally not compensable unless the claimant can establish defect and/or that the slip/ trip was due to a substance or foreign object

Occupational Diseases

I. What is an Occupational Disease?

An occupational disease is a disease arising out of and in the course of employment, but not an ordinary disease of life, to which the general public is exposed outside of the employment. A condition must be a disease to receive benefits under the VA Workers' Compensation Act.

For a disease to be considered compensable, the following must occur:

1. Employee must prove that, more likely than not, the disease arose out of and in the course of the employment and not from causes outside the employment.
2. The employment must be the proximate cause of the disease

3. The disease must be caused by conditions unique to which the employee actually works, not the normal working conditions to which other workers in the same occupation are exposed
4. The disease is not a condition of the neck, back, or spinal column

II. Occupational Disease Notes

1. An ordinary disease of life, aggravated by the work environment, is not compensable
2. Carpal Tunnel Syndrome and Hearing Loss can be compensable ordinary diseases of life if all of the above requirements are met
3. An employee must file a claim for an occupational disease within 2 years after diagnosis of a disease is first communicated by the treating physician to the employee or within 5 years from the last injurious exposure to the disease, whichever comes first
4. The first **communication of the diagnosis** of an occupational disease to the employee is considered the date of accident for compensation benefits
5. **Peculiar to the employment** means conditions unique to the employment, not conditions to which the general public is exposed
6. **Injurious exposure** means exposure to hazards on the job which causes a disease

Snapshot of Workers' Compensation Benefits

I. Injuries Covered Under the Act

- A. An **injury by accident** that arises out of and in the course and scope of employment
- B. An **occupational Disease** that is caused by the work with the exception of diseases of the back, neck or spinal column

II. Terminology

- A. **Waiting Period (WP)** – The first seven days of disability are not payable unless the employee is disabled more than 21 days. They do not need to be consecutive
- B. **Average-Weekly-Wage (AWW)** – The employee's average-weekly-wage, including overtime, for the 52 weeks preceding the injury. Please note: these are gross earnings before any deductions are made for taxes or Social Security. If an injured employee has worked less than 12 months, earnings for the time worked should be used. If an injured employee has worked less than 60 days, the earnings of a similar employee may be used
- C. **Compensation Rate (CR)** – Two-thirds of the AWW, subject to a maximum and a minimum (amounts change July 1st every year). This is the actual amount the employee will receive
- D. **Virginia Workers' Compensation Commission**- Administers the workers' comp system for the state of Virginia

III. Types of Benefits

- A. **Medical Benefits** - Related and necessary medical expenses are covered for lifetime, as long as a medical award has been entered. If an award is not in place, a 2-year statute of limitations applies
- B. **Temporary Total Disability (TTD)** - Paid at the compensation rate while an employee remains unable to work in any capacity. These benefits are only payable if the treating/panel physician authorizes the disability
 - a. To calculate the TTD rate, multiply the claimants AWW by $66 \frac{2}{3}$ (.66667)
 - i. Example: Claimants AWW = \$629.59 x .66667 = \$419.73 CR
 - b. In the state of Virginia, there are maximum and minimum compensation rates which change effective on July 1st every year. If the claimant's compensation rate is above the maximum compensation rate, they can only receive the maximum rate
 - i. Example: Claimants AWW = \$1545.00 x .6667 = \$1030.01. The maximum CR for 2015 is \$975.00, so the claimant would only be entitled to \$975.00
 - c. The same applies for the minimum compensation rate; the claimant cannot make more than their average-weekly-wage

- i. Example: Claimants AWW = $\$353.25 \times .66667 = \235.51 . The minimum compensation rate for 2015 is \$243.75, so the claimant would be entitled to the minimum CR of \$243.75
 - ii. Example: Claimants AWW = \$193.52. As the minimum comp rate for this year is \$243.75, and the claimant's AWW is below that, they are not entitled to more. Their AWW and CR would be the same: \$193.52
- C. **Temporary Partial Disability (TPD)** - Paid when an employee returns to work at modified-duty and is paid fewer wages than prior to the accident. It is calculated at 2/3 of the difference between pre-injury average-weekly-wage and current average-weekly-wage
 - a. Example: If an employee returns to modified work and is only working partial days making \$150.00 for the week, the TPD rate is calculated by taking his pre-injury AWW (\$575.25) and subtracting his post-injury AWW (\$150.00) and multiplying by $66 \frac{2}{3}$ to come up with his temporary partial rate
 - i. Pre-AWW \$575.25 – Post-AWW \$150.00 = $\$425.25 \times .66667 = \283.51
- D. **Permanent Partial Disability (PPD)**- Payable for permanent loss of use of a scheduled body part. No benefits for the back, neck, or body as a whole in the state of Virginia
- E. **Permanent Total Disability (PTD)**- Lifetime wage benefits paid at weekly compensation rate if an employee loses any 2 limbs in the same accident, or is totally paralyzed or disabled from a severe brain injury
- F. **Death Benefits**- Payable to a surviving spouse, children under 18 (or 23 if enrolled in college) or parent in need. Can include \$1,000 in transportation costs and funeral expenses up to \$10,000
- G. **Cost of Living Adjustment (COLA)**- Adjustments are applicable on awards for TTD, PTD, or death benefits. The employee/dependent must request an adjustment and provide evidence of his/her social security benefits.

The maximum amount of the total of these benefits is 500 weeks of compensation. Example: 310 weeks of TTD, 90 weeks of TPD, and 100 weeks of PPD-all combined = 500 weeks.

IV. Time Limitations

- A. **Filing a claim** - An employee has **2 years** from the date of accident to file a claim with the Virginia Workers' Compensation Commission for lost wages and/or medical benefits
- B. **Medical Benefits** - For injuries/accidents that involve either medical treatment only or wage loss that does not exceed the seven-day waiting period, the injured worker is not automatically entitled to lifetime medical benefits. The employee has **2 years** from the accident date to request these benefits. If not requested, the employee's medical benefits cease at the 2-year date
- C. **Change in condition**- A change of condition can be considered a change in physical condition of the injured employee or a change in conditions under which compensation was previously awarded, suspended or terminated. An employee has **2 years** from the date compensation was last paid to file for a change in condition

- D. **Permanent Partial Disability** – An employee has **3 years** from the last date compensation is paid under an Award to make a claim for permanent partial benefits
- E. **Occupational Disease** – The employee must file a claim with the Virginia Workers' Compensation Commission within **2 years** after the diagnosis of a disease is first communicated (by the treating physician) to the employee or within **5 years** from the last exposure to the disease, whichever comes first

If an employee does not meet the time limitations above, they could be barred from benefits under VA Workers' Compensation Act.

V. Disputed Claims: The Hearing Process

- A. The first level is a hearing before a **Deputy Commissioner**. If either party disagrees with the Deputy Commissioner's opinion, that party has 30 days to file an appeal to the:
 - a. **Full Commission** – The Full Commission will review the opinion and render their opinion. If either party disagrees with this opinion, that party can appeal to:
 - i. **Virginia Court of Appeals** – If the party is still disagrees with the decision, that party can request a review by the **Supreme Court of Virginia**

IV. Common Virginia Workers' Compensation Forms

- A. **Employer's Accident Report (EAR)**- Completed by the employer at the time of injury and sent to the insurance carrier
- B. **Claim for Benefits (CFB)**- Completed by the injured employee requesting benefits
- C. **Award Agreement (AA)**- An agreement between the employee and employer/carrier stating that the claim is compensable, specifying body parts, AWW, CR, and time period effective
- D. **Termination of Wage Loss Award (TOW)**- Agreement completed when the employee returns to work that specifies the date returned to work and if the employee is returning at light or full duty